

# **EXHIBIT 13**

DB ALEX. BROWN LLC  
P.O. BOX 1776  
BALTIMORE MD 21203

CLENDENING/BRUBAKER  
INVESTMENT REP #109  
200 CRESCENT COURT SUITE 500  
DALLAS TX 75201-6959  
(214) 740-7700 (800) 527-3903

### Portfolio Overview

Assets	Value as of November 30, 2000	% of total assets
Cash	\$0.00	0.0%
Money funds	\$154,065.00	100.0%
Common stocks	0.00	0.0%
Preferred stocks	0.00	0.0%
Mutual funds	0.00	0.0%
Government debentures	0.00	0.0%
Corporate debt issues	0.00	0.0%
Municipal debentures	0.00	0.0%
Certificates of deposit	0.00	0.0%
Options	0.00	0.0%
Limited partnerships	0.00	0.0%
Annuities	0.00	0.0%
Other	0.00	0.0%
<b>Total assets</b>	<b>\$154,065.00</b>	<b>100.0%</b>
Liabilities	Value as of November 30, 2000	% of total assets
Cash debit	\$0.00	0.0%
Marg in debt	0.00	0.0%
Short options	0.00	0.0%
Other short securities	0.00	0.0%
<b>Total liabilities</b>	<b>\$0.00</b>	<b>0.0%</b>
<b>Net Value of Your Account</b>	<b>\$154,065.00</b>	
<b>Net Value as of December 31, 1999</b>	<b>\$0.00</b>	

Deutsche Bank



### Deutsche Banc Alex. Brown Client Statement

TRI INVESTMENTS LLC  
ATTN: BILL P. TSOURAPAS  
1301 WEST 22ND ST STE 615  
OAKBROOK IL 60523

### Activity

Activity	This period	
Net value of your account as of October 31	\$0.00	
Net cash activity	\$14,065.00	
Net securities interest of account	0.00	
Net return on your portfolio	0.00	
Net value of your account as of November 30	\$154,065.00	
Income	This period	Year to date
Net income received	\$0.00	\$0.00
Current estimated annual income	\$9,361.74	
Current estimated annual yield	5.07%	

Statement of Account  
November 1 to November 30, 2000  
Account 223-78380

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**Deutsche Bank Alex. Brown**

Statement of Account  
November 1 to November 30, 2000  
Account 223-78580

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**Cash Summary**

Opening Cash Balance	\$0.00	
<b>Income Summary</b>		
	<b>This period</b>	<b>Year to date</b>
Taxable dividends	\$0.00	\$0.00
Taxable interest	0.00	0.00
Capital gains distributions received	0.00	0.00
Non-taxable dividends	0.00	0.00
Non-taxable interest	0.00	0.00
Net income received	\$0.00	\$0.00
<b>Cash Activity</b>		
	<b>This period</b>	<b>Year to date</b>
Deposits	\$154,065.00	\$154,065.00
Withdrawals	0.00	0.00
U.S. tax withheld	0.00	0.00
Non-resident tax withheld	0.00	0.00
Foreign taxes withheld	0.00	0.00
Interest charges on cash debit	0.00	0.00
Interest charges on margin debit	0.00	0.00
Net cash activity	\$154,065.00	\$154,065.00
<b>Purchases and Sales</b>		
	<b>This period</b>	<b>Year to date</b>
Total purchases	\$154,065.00	\$154,065.00
Total sales	0.00	0.00
Other money fund sales	0.00	0.00
Net purchases/sales (incl. money funds)	\$154,065.00	\$154,065.00
<b>Other Activity</b>		
	<b>This period</b>	<b>Year to date</b>
Bond redemptions	\$0.00	\$0.00
Other activity	0.00	0.00
Net other activity	\$0.00	\$0.00
Closing Cash Balance	\$0.00	

**Portfolio Summary**

<b>Activity</b>	<b>This period</b>	<b>Year to date</b>
Previous net account value	\$0.00	\$0.00
Net cash activity	\$154,065.00	\$154,065.00
Net securities interest of account	0.00	0.00
Adjusted previous account value	\$154,065.00	\$154,065.00
Net change in market value	0.00	0.00
Net income received	0.00	0.00
Net account value as of November 30, 2000	\$154,065.00	\$154,065.00
Net return on portfolio	0.00	0.00

## Portfolio Holdings

Prices are provided by an independent pricing service. For current market price quotations, call your Investment Representative.

### Cash and Equivalents

	Amount	Estimated annual income	Current annual yield
DEUTSCHE BANK ALEX. BROWN CASH RESERVE FUND, INC.- PRIME SERIES	\$154,065.00	\$9,351.74	6.07%
Total cash and equivalents	\$154,065.00	\$9,351.74	

### Common Stocks

	Symbol	Quantity	Current share price	Current market value	Estimated annual income	Estimated dividend yield
1	LONG CALL FX OPTION EUR/JPY STRIKE 96.40 PREM 1.0271000 OTD 11/27/00 EXP 12/5/00	1	Not Priced	Not Priced		
1	SHORT CALL FX OPTION EUR/JPY STRIKE 96.42 PREM 1.0166250 OTD 11/27/00 EXP 12/5/00	1	Not Priced	Not Priced		
Total common stocks				\$0.00		

## Portfolio Activity

### Purchases and Sales

Statement date	Activity	Type	Quantity	Description	Unit price	Amount
8 11/27/2000	Purchased	Sweep	154,065	DEUTSCHE BANK ALEX. BROWN CASH RESERVE FUND, INC.- PRIME SERIES	\$1	\$154,065.00 -
Net purchases and sales						\$154,065.00 -

### Deposits

#### Other Deposits

Statement date	Description	Amount
1 11/26/2000	FUNDS RECEIVED	\$154,065.00
Total other deposits		\$154,065.00

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Statement of Account  
November 1 to November 30, 2000  
Account 223-78580

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Deutsche Banc Alex. Brown

Statement of Account  
November 1 to November 30, 2000  
Account 223-78580

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Portfolio Activity continued  
Other Activity in Your Account

Sell order date	Activity	Quantity	Description	Amount
11/30/2000	Journal	1	LONG CALL FX OPTION EUR/JPY STRIKE 96.40 FROM 10271000 DTD 11/27/00 EXP 12/15/00 SEE DB CONFIRM	
11/30/2000	Journal	1	SHORT CALL FX OPTION EUR/JPY STRIKE 96.42 FROM 10188250 DTD 11/27/00 EXP 12/15/00 SEE DB CONFIRM	

## Market Indices

Equities	Current	December 31, 1999	Change year to date
Dow Jones Industrial Average	10,414.49	11,407.12	9.4%
NASDAQ Composite	2,597.93	4,069.31	36.2%
S&P 500	1,314.95	1,469.25	10.5%
MSCI EAFE	1,442.76	1,740.04	18.0%

Fixed Income Securities	Current	December 31, 1999
Long term treasury bond yield	5.63%	6.48%
Lehman Brothers Intermediate US Gov't Index	7.34%	8.16%

## Disclosure

[illegible]**Money Market Fund 7 Day Average Yields:**

DB ALEX. BROWN CASH RESERVE PRIME	6.07%
DB ALEX. BROWN CASH RESERVE TREASURY	5.84%
DB ALEX. BROWN CASH RESERVE TAX FREE	3.52%

**Your Standing Instructions are:**

Purchases: Hold securities in street name  
Sales: Credit proceeds to account  
Income: Hold in account

**End of Statement**

# **EXHIBIT 14**

DB ALEX. BROWN LLC  
P. O. BOX 1776  
BALTIMORE MD 21203

CLENDENING/BRUBAKER  
INVESTMENT REP #109  
200 CRESCENT COURT SUITE 500  
DALLAS TX 75201-6959  
(214) 740-7700 (800) 527-3903

### Portfolio Overview

Assets	Value as of November 30, 2000	% of total assets
Cash	\$0.00	0.0%
Money funds	\$154,065.00	100.0%
Common stocks	0.00	0.0
Preferred stocks	0.00	0.0
Mutual funds	0.00	0.0
Government debt issues	0.00	0.0
Corporate debt issues	0.00	0.0
Municipal debt issues	0.00	0.0
Certificates of deposit	0.00	0.0
Options	0.00	0.0
Limited partnerships	0.00	0.0
Annuities	0.00	0.0
Other	0.00	0.0
<b>Total assets</b>	<b>\$154,065.00</b>	<b>100.0%</b>
Liabilities	Value as of November 30, 2000	% of total assets
Cash debit	\$0.00	0.0%
Marg in debt	0.00	0.0
Short options	0.00	0.0
Other short securities	0.00	0.0
<b>Total liabilities</b>	<b>\$0.00</b>	<b>0.0%</b>
<b>Net Value of Your Account</b>	<b>\$154,065.00</b>	
<b>Net Value as of December 31, 1999</b>	<b>\$0.00</b>	

Deutsche Bank 

### Deutsche Banc Alex. Brown Client Statement

TR2 INVESTMENTS  
ATTN: BILL P. TSOURAPAS  
1301 WEST 22ND ST STE 615  
OAKBROOK IL 60521

### Activity

Activity	This period
Net value of your account as of October 31	\$0.00
Net cash activity	\$154,065.00
Net amount for interest of account	0.00
Net return on your portfolio	0.00
Net value of your account as of November 30	\$154,065.00

Income	This period	Year to date
Net income received	\$0.00	
Current estimated annual income	\$9,351.74	
Current estimated annual yield	6.07%	

Statement of Account  
November 1 to November 30, 2000  
Account 223-78581

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**Deutsche Bank Alex. Brown**

Statement of Account  
November 1 to November 30, 2000  
Account 223-78381

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**Cash Summary**

Opening Cash Balance	\$0.00	
<b>Income Summary</b>	<b>This period</b>	<b>Year to date</b>
Taxable dividends	\$0.00	\$0.00
Taxable interest	0.00	0.00
Capital gains distributions received	0.00	0.00
Non-taxable dividends	0.00	0.00
Non-taxable interest	0.00	0.00
Net income received	\$0.00	\$0.00
<b>Cash Activity</b>	<b>This period</b>	<b>Year to date</b>
Deposits	\$154,065.00	\$154,065.00
Withdrawals	0.00	0.00
U.S. tax withheld	0.00	0.00
Non-resident tax withheld	0.00	0.00
Foreign taxes withheld	0.00	0.00
Interest charges on cash debit	0.00	0.00
Interest charges on margin debit	0.00	0.00
Net cash activity	\$154,065.00	\$154,065.00
<b>Purchases and Sales</b>	<b>This period</b>	<b>Year to date</b>
Total purchases	\$154,065.00	\$154,065.00
Total sales	0.00	0.00
Other money fund sales	0.00	0.00
Net purchases/sales (incl. money funds)	\$154,065.00	\$154,065.00
<b>Other Activity</b>	<b>This period</b>	<b>Year to date</b>
Bond redemptions	\$0.00	\$0.00
Other activity	0.00	0.00
Net other activity	\$0.00	\$0.00
Closing Cash Balance	\$0.00	

**Portfolio Summary**

<b>Activity</b>	<b>This period</b>	<b>Year to date</b>
Previous net account value	\$0.00	\$0.00
Net cash activity	\$154,065.00	\$154,065.00
Net securities into/out of account	0.00	0.00
Adjusted previous account value	\$154,065.00	\$154,065.00
Net change in market value	0.00	0.00
Net income received	0.00	0.00
Net account value as of November 30, 2000	\$154,065.00	\$154,065.00
Net return on portfolio	0.00	0.00

**Portfolio Holdings**

Prices are provided by an independent pricing service. For current market price quotations, call your Investment Representative.

**Cash and Equivalents**

	Amount	Estimated annual income	Current annual yield
DEUTSCHE BANK ALEX. BROWN CASH RESERVE FUND, INC.- PRIME SERIES	\$154,065.00	\$93.51.74	6.07%
<b>Total cash and equivalents</b>	<b>\$154,065.00</b>	<b>\$93.51.74</b>	

**Common Stocks**

	Symbol	Quantity	Current share price	Current market value	Estimated annual income	Estimated dividend yield
L	LONG CALL FX OPTION EUR/GBP STRIKE 61.55 PREM 10271000 DTD 11/27/00 EXP 12/15/00	1	Not Priced	Not Priced		
L	SHORT CALL FX OPTION EUR/GBP STRIKE 61.57 PREM 10145250 DTD 11/27/00 EXP 12/15/00	1	Not Priced	Not Priced		
<b>Total common stocks</b>				<b>\$0.00</b>		

**Portfolio Activity****Purchases and Sales**

Settlement date	Activity	Type	Quantity	Description	Unit price	Amount
11/27/2000	Purchased	Sweep	154.065	DEUTSCHE BANK ALEX. BROWN CASH RESERVE FUND, INC.- PRIME SERIES	\$1	\$154,065.00
<b>Net purchases and sales</b>						<b>\$154,065.00</b>

**Deposits****Other Deposits**

Disposition date	Description	Amount
11/28/2000	FUNDS RECEIVED	\$154,065.00
<b>Total other deposits</b>		<b>\$154,065.00</b>



Statement of Account  
November 1 to November 30, 2000  
Account 223-78581

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**Deutsche Banc Alex. Brown**

Statement of Account  
November 1 to November 30, 2000  
Account 223-78381

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**Portfolio Activity** continued  
**Other Activity in Your Account**

Statement date	Activity	Quantity	Description	Amount
11/30/2000	Journal	1	LONG CALL FX OPTION EUR/GBP STRIKE \$155 PREM 10271000 DTD 11/27/00 EXP 12/15/00 SEE DB CONFIRM	
11/30/2000	Journal	1	SHORT CALL FX OPTION EUR/GBP STRIKE \$157 PREM 10168200 DTD 11/27/00 EXP 12/15/00 SEE DB CONFIRM	

**Market Indices**

Equities	Current	December 31, 1999	Change year to date
Dow Jones Industrial Average	10,414.49	11,497.12	9.4%
NASDAQ Composite	2,597.93	4,069.31	36.2%
S&P 500	1,314.95	1,469.35	10.5%
MSCI EAFE	1,442.76	1,760.04	18.0%

Fixed Income Securities	Current	December 31, 1999
Long term treasury bond yield	5.63%	6.48%
Lehman Brothers Intermediate US Credit Index	7.36%	0.16%

## Disclosure

Please advise us promptly of any material change in your investment or financial situation. Your account is with DB A.M. Brown LLC, a registered broker-dealer, affiliated to Deutsche Bank A.M. Brown. The reporting period for your account ends on the last day of the month. The data included on this statement and balance statements are based on the most recent data received from the fund manager. All statements will be reviewed on the next statement. In order to review margin interest charges, you should review this statement for any changes in margin interest charges.

Any fee paid to the fund manager for the purchase of the fund, although properly accounted for on our books and records, are not paid to you and may be used to defray the costs of the fund's business, without payment to you subject to the limitations of 17 CFR Section 263.3 under the Securities Exchange Act of 1934. Positions and activity shown on your margin account comprise a combined statement of your margin account and your equity, non-margin account. The fund's investment strategy is maintained for you in accordance with the policies of the Board of Governors of the Federal Reserve System and a copy of the fund's prospectus by your margin activity and account for your future use. A permit and detailed record of the activity in this account is available for inspection at any time. We reserve the right to suspend or modify requirements relating to the operation of a margin account which may exceed requirements established by the Federal Reserve Board and/or the New York Stock Exchange.

Aggregate commissions which you have paid are not reported separately on this statement of account. Commissions and charges incurred in connection with transactions of options and other securities have been included in confirmation of those account fees previously furnished you. A summary of this information will be made available to you upon request.

Orders for your account may be aggregated with other customer orders. In so doing, you may receive an average price for your orders which may differ from the price(s) you may have received had your orders not been aggregated. This practice may also result in your orders being partially completed.

A financial statement on this form is available for your personal inspection at our offices, or a copy will be mailed upon your written request.

Information regarding market prices, market values, estimated income, dividends and annual yields is based on data obtained from sources we consider to be reliable but is not guaranteed as to accuracy. This information is provided as a convenience only to your financial record keeping.

Deutsche Bank A.M. Brown money fund yield figures are based on the seven-day period preceding the statement date. The fund's average annual yield and income figures are computed based on other dividends for the preceding twelve-month period or the annualized rate of distribution.

Account information may have been provided regarding both publicly traded fund net partnerships and certain other kind of partnership interests and through the firm. The fund's value is based on the value of the fund's net partnership interest and certain other kind of partnership interests. The fund's value is based on the value of the fund's net partnership interest and certain other kind of partnership interests.

We receive payment for trading for securities whose orders in certain fixed securities. The determination as to where to make a trade is based on several factors, subject to the overriding consideration that customers receive the best execution. All orders for which we receive payment are subject to the possibility of price improvements, so that all such orders potentially can be executed at prices superior to the best bid or ask offer. Payment is required in the form of cash or credit against margin interest and spread to the fund. Details will be furnished upon written request.

DB A.M. Brown LLC, 440 Madison Avenue, New York, New York 10017, is a member of the Financial Industry Regulatory Authority (FINRA) and the Securities Investor Protection Corporation (SIPC).

DB A.M. Brown LLC, Member SIPC. The fund's value is based on the value of the fund's net partnership interest and certain other kind of partnership interests.

DB A.M. Brown LLC, Member SIPC. The fund's value is based on the value of the fund's net partnership interest and certain other kind of partnership interests.

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## Money Market Fund 7 Day Average Yields:

DB ALEX. BROWN CASH RESERVE PRIME	6.07%
DB ALEX. BROWN CASH RESERVE TREASURY	5.84%
DB ALEX. BROWN CASH RESERVE TAX FREE	3.52%

## Your Standing Instructions are:

Purchase: Hold securities in street name

Sales: Credit proceeds to account

Income: Held in account

End of Statement

Deutsche Bank



Statement of Account  
November 1 to November 30, 2000  
Account 223-78581

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# **EXHIBIT 15**

DB ALEX. BROWN LLC  
P. O. BOX 1776  
BALTIMORE MD 21203

CLENDENING/BRUBAKER  
INVESTMENT REP #109  
200 CRESCENT COURT SUITE 500  
DALLAS TX 75201-6939  
(214) 740-7700 (800) 527-3903

### Portfolio Overview

Assets	Value as of November 30, 2000	% of total assets
Cash	\$0.00	0.0%
Money funds	\$154,065.00	100.0%
Common stocks	0.00	0.0%
Preferred stocks	0.00	0.0%
Mutual funds	0.00	0.0%
Government debt issues	0.00	0.0%
Corporate debt issues	0.00	0.0%
Municipal debt issues	0.00	0.0%
Certificates of deposit	0.00	0.0%
Options	0.00	0.0%
Linked partnerships	0.00	0.0%
Annuitants	0.00	0.0%
Other	0.00	0.0%
<b>Total assets</b>	<b>\$154,065.00</b>	<b>100.0%</b>
Liabilities	Value as of November 30, 2000	% of total assets
Cash debt	\$0.00	0.0%
Margin debt	0.00	0.0%
Short options	0.00	0.0%
Other short securities	0.00	0.0%
<b>Total liabilities</b>	<b>\$0.00</b>	<b>0.0%</b>

Net Value of Your Account \$154,065.00

Net Value as of December 31, 1999 \$0.00

### Deutsche Bank Alex. Brown Client Statement

TR3 INVESTMENTS LLC  
ATTN: BILL P. TSOURAPAS  
1301 WEST 22ND ST. STE 615  
OAKBROOK IL 60523

### Activity

	This period
Net value of your account as of October 31	\$0.00
Net cash activity	\$154,065.00
Net securities interest of account	0.00
Net return on your portfolio	0.00
Net value of your account as of November 30	\$154,065.00

### Income

	This period	Year to date
Net income received	\$0.00	\$0.00
Current estimate of annual income	\$9.25 174	
Current estimate of annual yield	5.07%	

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Statement of Account  
November 1 to November 30, 2000  
Account 223-78382

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**Deutsche Bank Alex. Brown**

Statement of Account  
November 1 to November 30, 2000  
Account 223-78582

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**Cash Summary**

Opening Cash Balance	\$0.00	
<b>Income Summary</b>		
	This period	Year to date
Taxable dividends	\$0.00	\$0.00
Taxable interest	0.00	0.00
Capital gains distributions received	0.00	0.00
Non-taxable dividends	0.00	0.00
Non-taxable interest	0.00	0.00
Net income received	\$0.00	\$0.00
<b>Cash Activity</b>		
	This period	Year to date
Deposits	\$154,065.00	\$154,065.00
Withdrawals	0.00	0.00
U.S. tax withheld	0.00	0.00
Non-employee tax withheld	0.00	0.00
Foreign taxes withheld	0.00	0.00
Interest charges on cash debit	0.00	0.00
Interest charges on margin debit	0.00	0.00
Net cash activity	\$154,065.00	\$154,065.00
<b>Purchases and Sales</b>		
	This period	Year to date
Total purchases	\$154,065.00	\$154,065.00
Total sales	0.00	0.00
Other money fund sales	0.00	0.00
Net purchase/sales (incl. money funds)	\$154,065.00	\$154,065.00
<b>Other Activity</b>		
	This period	Year to date
Bond redemptions	\$0.00	\$0.00
Other activity	0.00	0.00
Net other activity	\$0.00	\$0.00
Closing Cash Balance	\$0.00	

**Portfolio Summary**

Activity	This period	Year to date
Previous net account value	\$0.00	\$0.00
Net cash activity	\$154,065.00	\$154,065.00
Net securities interest of account	0.00	0.00
Adjusted previous account value	\$154,065.00	\$154,065.00
Net change in market value	0.00	0.00
Net income received	0.00	0.00
Net account value as of November 30, 2000	\$154,065.00	\$154,065.00
Net return on portfolio	0.00	0.00

### Portfolio Holdings

Prices are provided by an independent pricing service. For current market price quotations, call your Investment Representative.

#### Cash and Equivalents

	Amount	Estimated annual income	Current annual yield
DEUTSCHE BANK ALEX. BROWN CASH RESERVE FUND, INC.- PRIME SERIES	\$154,065.00	\$93.51.74	6.07%
<b>Total cash and equivalents</b>	<b>\$154,065.00</b>	<b>\$93.51.74</b>	

#### Common Stocks

	Symbol	Quantity	Current share price	Current market value	Estimated annual income	Estimated dividend yield
1	LONG CALL FX OPTION EUR/JPY STRIKE 96.40 PREM 10271000 DTD 11/27/00 EXP 12/15/00	1	No Price	No Price		
1	SHORT CALL FX OPTION EUR/JPY STRIKE 96.40 PREM 10146200 DTD 11/27/00 EXP 12/15/00	1	No Price	No Price		
<b>Total common stocks</b>				<b>\$0.00</b>		

### Portfolio Activity

#### Purchases and Sales

Sell/buy date	Activity	Type	Quantity	Description	Unit price	Amount
11/27/2000	Purchased	Sweep	154.065	DEUTSCHE BANK ALEX. BROWN CASH RESERVE FUND, INC.- PRIME SERIES	\$1	\$154,065.00
<b>Net purchases and sales</b>						<b>\$154,065.00</b>

#### Deposits

##### Other Deposits

Date received	Description	Amount
11/24/2000	FUNDS RECEIVED	\$154,065.00
<b>Total other deposits</b>		<b>\$154,065.00</b>



Statement of Account  
November 1 to November 30, 2000  
Account 223-78382

Page 3 of 5



**Deutsche Bank Alex. Brown**Statement of Account  
November 1 to November 30, 2000  
Account 223-78382

Page 4 of 5

**Portfolio Activity** continued  
**Other Activity in Your Account**

Settlement date	Activity	Quantity	Description	Amount
1 11/30/2000	Journal	1	LONG CALL FX OPTION EUR/JPY STRIKE 96.40 PREM 10171000 DTD 11/27/00 EXP 12/15/00 SEE DB CONFIRM	
1 11/30/2000	Journal	1	SHORT CALL FX OPTION EUR/JPY STRIKE 96.42 PREM 10186250 DTD 11/27/00 EXP 12/15/00 SEE DB CONFIRM	

**Market Indices**

Equities	Current	December 31, 1999	Change year to date
Dow Jones Industrial Average	10,414.49	11,497.12	9.4%
NASDAQ Composite	2,597.93	4,049.31	36.2%
S&P 500	1,314.95	1,469.25	10.5%
MSCI EAFE	1,442.76	1,700.04	18.0%

Fixed Income Securities	Current	December 31, 1999
Long term treasury bond yield	5.63%	6.48%
Lehman Brothers Immediate US Credit Index	7.36%	0.16%

## Disclosure

Please advise us promptly of any material change in your investment or financial situation. Your account is with DB Alex. Brown LLC, a registered broker-dealer, located at 10000 Old Pointe Blvd., Suite 100, Dallas, Texas 75241. The reporting period for your statement ends on the last day of the month. The dates and times of purchases and sales are subject to change. Margin interest charges incurred after the period end date and on the statement will be shown on the next statement. In order to receive margin interest charges, you should make this statement for use in conjunction with the next statement.

Any fee credit balance represents funds payable to you on demand with, although properly accounted for on our books and records, are not segregated and are subject to the control of the Firm's custodian, without payment to you given to the limitations of 17 CFR Section 240.22(c)-3 under the Securities Exchange Act of 1934.

Investment and activity showing your single account's complete a combined statement of your margin account and your general account. The general account statement is submitted for you in accordance with Regulation T of the Board of Governors of the Federal Reserve System and is composed of funds generated by your margin activity and segregated for your protection. A separate detailed record of the activity in this account is available for inspection at your request. We reserve the right to establish or modify requirements pertaining to the opening of a margin account with any stated requirements established by the Federal Reserve Board and/or the New York Stock Exchange.

A group of considerations which you have paid are not reported separately on this statement of account. Commissions and charges incurred in connection with the execution of orders and other transactions have been included in the statements of these income less previously furnished you. A statement of this information will be made available to you upon request.

Orders for your account may be aggregated with other customer orders. In so doing, you may receive an average price for your orders which may differ from the price(s) you may have received had your orders not been aggregated. This practice may also result in your orders being partially executed.

A financial statement on this form is available for your personal inspection at our office, or a copy will be mailed upon your written request.

Information regarding market prices, market values, estimated income, dividends and annual yields is based on data obtained from sources we consider to be reliable but is not guaranteed as to accuracy. This information is provided as a convenience only and is not intended to constitute an offer.

Deutsche Bank Alex. Brown money fund yield figures are based on the seven-day period preceding the statement date. The Deutsche Bank estimated yield and income figures are computed to and on other dividends for the preceding twelve-month period or the annualized rate of distribution.

Account information may have been provided regarding both publicly traded fund and partnership securities and other securities. Account information may have been provided regarding both publicly traded fund and partnership securities and other securities. Account information may have been provided regarding both publicly traded fund and partnership securities and other securities.

We assume no responsibility for making for execution more orders in certain fixed securities. The determination as to whether or not orders are based on several factors, subject to the overriding consideration that customers receive best execution. All orders for which we receive payment are subject to the possibility of price improvement, as that all such orders potentially can be executed at prices superior to the best bid or best offer. Payment is required in the form of cash, or credit against exchange fees and capital or fees. Details will be furnished upon written request.

DB Alex. Brown LLC debits \$50 from each account referring to another broker-dealer or the total institution to cover the administrative costs of such transfer.

NAAD Register, Inc. will be available to investors for information regarding to Public Disclosure Program. The Public Disclosure Program number is (800) 282-9999. The NAAD Register website can be found at [www.naad.com](http://www.naad.com).

DB Alex. Brown LLC, Member SIPC.

\* The current portfolio value includes capital and securities.

\*\* Denotes a mutual fund.

\*\*\* Denotes a foreign security.

## Money Market Fund 7 Day Average Yields:

DB ALEX. BROWN CASH RESERVE PRIME	6.07%
DB ALEX. BROWN CASH RESERVE TREASURY	5.84%
DB ALEX. BROWN CASH RESERVE TAX FREE	5.52%

## Your Standing Instructions are:

Purchases: Hold securities in street name  
Sales: Credit proceeds to account  
Income: Hold in account

End of Statement



Statement of Account  
November 1 to November 30, 2000  
Account 223-78582

Page 5 of 5

# **EXHIBIT 16**

NOV-29-2000 01:07

DEUTSCHE BANK NY

212 469 4466 P.17

**Deutsche Bank AG New York Branch**

28 November, 2000

**Foreign Exchange Digital Option Transaction**  
Our ref: 36574

V1 Investments LLC  
Care of Craig Brubaker  
DB Alex Brown  
200 Crescent Court, Suite 500  
Dallas, Texas 75201  
214-740-7777

Deutsche Bank AG New York Branch  
1290 Ave. of the Americas  
New York NY 10019

Telephone: 212-469-4033  
Fax: 212-469-4466

Ladies and Gentlemen:

The purpose of this letter agreement (this "Confirmation") is to confirm the terms and conditions of the Foreign Exchange Digital Option Transaction entered into between us ("Party A") and you ("Party B") on the Trade Date referred to below (the "Transaction"). The parties acknowledge and agree that B.T. Alex Brown has acted as introducing broker to Party A with respect to this Transaction. The Transaction consists of a number of elements as detailed below in Sections 1, 2(i) and (ii), 3(i) and (ii) and Section 4. Certain definitions and provisions which are applicable to more than one element of the Transaction are detailed in Section 1. The terms of the Transaction to which this Confirmation relates are as follows:

**1. Section 1 – General Terms**

Notional Amount:	USD 636,000.00
Trade Date:	27 November 2000
Termination Date:	15 December 2000, subject to modification in accordance with the Following Business Day Convention.
Business Days:	In New York
Calculation Agent:	Party A
Currency Pair:	EUR/GBP

**2. Section 1 – First Digital Option Transaction****(i) Initial Exchange Provisions:**

Party A Initial Exchange Amount:	Zero
Party B Initial Exchange Amount:	USD 318,000.00
Initial Exchange Date:	29 November 2000, subject to adjustment in accordance with the Following Business Day Convention.

**(ii) Final Exchange Provisions:**

Party A Final Exchange Amount:	USD 636,000.00
Party B Final Exchange Amount:	Zero
First Range Level:	EUR 0.6155 per GBP 1,0000
First Rate Determination Date:	Means the Termination Date
Final Exchange Date:	19 December 2000, subject to adjustment in accordance with the Following Business Day Convention.

(A) If the Spot Rate is, on the First Rate Determination Date at 10:00 a.m. local time in New York, greater than or equal to the First Range Level (such event being a "First Digital Option Trigger Event"), then upon the occurrence of such First Digital Option Trigger Event, (i) Party A shall pay to Party B the Party A Final Exchange Amount and (ii) Party B shall pay to Party A the Party B Final Exchange Amount. In determining whether a First Digital Option Trigger Event has occurred, a particular spot rate shall be disregarded if the Calculation Agent, acting in good faith considers that it would not be commercially reasonable to take account of it.

(B) Upon the occurrence of the First Digital Option Trigger Event, the Calculation Agent shall notify the other party orally (and, if requested, shall confirm such notice in writing by telex or telecopy) of the occurrence of the First Digital Option Trigger Event and provide details of the occurrence of such First Digital Option Trigger Event. A failure to give such notice shall not, however, prejudice the occurrence of the First Digital Option Trigger Event.

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NOV-29-2000 01:07

DEUTSCHE BANK NY

212 469 4466 P.18

**3. Section 1 - Second Digital Option Transaction****(i) Initial Exchange Provisions:**

Party A Initial Exchange Amount:	USD 314,820.00
Party B Initial Exchange Amount:	Zero
Initial Exchange Date:	29 November 2000, subject to adjustment in accordance with the Following Business Day Convention

**(ii) Final Exchange Provisions:**

Party A Final Exchange Amount:	Zero
Party B Final Exchange Amount:	USD 629,640.00
Second Range Level:	EUR 0.6157 per GBP 1.0000
Second Rate Determination Date:	Means the Termination Date
Final Exchange Date:	19 December 2000, subject to adjustment in accordance with the Following Business Day Convention

(A) If the Spot Rate is, on the Second Rate Determination Date at 10:00 a.m. local time in New York, greater than or equal to the Second Range Level (such event being a "Second Digital Option Trigger Event"), then upon the occurrence of such Second Digital Option Trigger Event, (i) Party A shall pay to Party B the Party A Final Exchange Amount and (ii) Party B shall pay to Party A the Party B Final Exchange Amount. In determining whether a Second Digital Option Trigger Event has occurred, a particular spot rate shall be disregarded if the Calculation Agent, acting in good faith considers that it would not be commercially reasonable to take account of it.

(B) Upon the occurrence of a Second Digital Option Trigger Event, the Calculation Agent shall notify the other party orally (and, if requested, shall confirm such notice in writing by telex or telecopy) of the occurrence of the Second Digital Option Trigger Event and provide details of the occurrence of such Second Digital Option Trigger Event. A failure to give such notice shall not however prejudice the occurrence of the Second Digital Option Trigger Event.

**Section 2 - Other Provisions**

(i) For the purposes of this Transaction only, the following provision shall apply:

"Subparagraph (ii) of Section 2 (c) of the ISDA Form shall not apply to the First Digital Option Transaction and the Second Digital Option Transaction.

(ii) Offices:

- (a) The Office of Party A for the Transaction is New York; and
- (b) The Office of Party B for the Transaction is Delaware.

**3. Representations:**

Each party represents to the other party as of the date that it enters into this Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for this Transaction):

- (i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into this Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party including any affiliate or subsidiary thereof as investment advice or as a recommendation to enter into this Transaction, it being understood that information and explanations related to the terms and conditions of this Transaction shall not be considered to be investment advice or a recommendation to enter into the Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of this Transaction.

NOV-29-2008 01:07

DEUTSCHE BANK NY

212 469 4466 P.19

- (ii) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms and conditions and risks of this Transaction. It is also capable of assuming, and assumes, the risks of the Transaction.
- (iii) **Status of Parties.** The other party is not acting as a fiduciary for or adviser to it in respect of this Transaction.

#### 4. ISDA Agreement:

If you and we are parties to either an ISDA Interest Rate and Currency Exchange Agreement (for which purposes this Transaction shall constitute a "Swap Transaction") or an ISDA Master Agreement (in each case an "Agreement") then this Confirmation supplements forms part of and is subject to such Agreement. If you and we are not yet parties to an Agreement then this Confirmation evidences a complete and binding agreement between Party A and Party B as to the terms of the Transaction to which this Confirmation relates. In addition Party A and Party B agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of the ISDA Master Agreement (Multicurrency-Cross Border) (the "ISDA Form") with such modifications as you and we will in good faith agree. Upon execution by Party A and Party B of such an agreement, this Confirmation will supplement, form part of, and be subject to that agreement. All provisions contained or incorporated by reference in that agreement upon its execution will govern this Confirmation. Until we execute and deliver that agreement, this Confirmation, together with all other documents referring to the ISDA Form (each a "Confirmation") confirming transactions (each a "Transaction") entered into between us (notwithstanding anything to the contrary in a Confirmation) shall supplement, form a part of, and be subject to an agreement in the form of the ISDA Form as if we had executed an agreement on the Trade Date of the first such Transaction between us in such form with the Schedule thereto (i) specifying only that (a) the governing law is New York law and (b) the Termination Currency is U.S., Dollars, (ii) incorporating the addition to the definition of "Indemnifiable Tax" contained in (page 48 of) the ISDA "Users Guide to the 1992 ISDA Master Agreements" and (iii) incorporating any other modifications to the ISDA form specified below.

#### 5. Definitions:

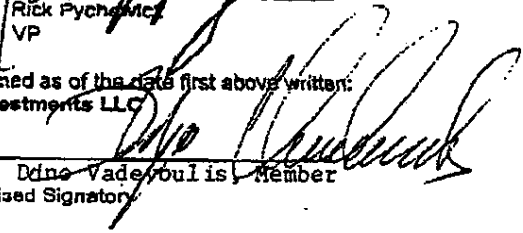
The definitions and provisions contained in the 1991 ISDA Definitions (as amended by the 1997 Supplement) as published by the International Swaps and Derivatives Association, Inc (the "Swap Definitions") and in the 1998 FX and Currency Option Definitions (the "FX Definitions") as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee (the "1998 Definitions", and together with the Swap Definitions, the "Definitions"), are incorporated into this Confirmation. In the event of any inconsistency between the SWAP Definitions and the 1998 Definitions, the 1998 Definitions will govern. In the event of any inconsistency between either set of Definitions and this Confirmation, this Confirmation will govern.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us or by sending to us a letter or telex substantially similar to this letter, which letter or telex sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms.

Yours faithfully,  
for and on behalf of  
Deutsche Bank AG, New York

By:   
Name: Rick Pychewicz  
Title: VP

Confirmed as of the date first above written:  
V1 Investments LLC

By:   
Name: Dina Vadevoulis, Member  
Authorized Signatory

By:   
Name: Andrew Bayley  
Title: Associate

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Authorized Signatory

For any query relating to this Confirmation please contact : 212-469-4033. Please sign and fax to 212-469-4466. Thank you.

# **EXHIBIT 17**

NOV-29-2000 01:08

DEUTSCHE BANK NY

212 469 4466

P.20

**Deutsche Bank AG New York Branch**

29 November, 2000

**Foreign Exchange Digital Option Transaction**  
 Our ref: 36575

V2 Investments LLC  
 Care of Craig Brubaker  
 DB Alex Brown  
 200 Crescent Court, Suite 500  
 Dallas, Texas 75201  
 214-740-7777

Deutsche Bank AG New York Branch  
 1290 Ave. of the Americas  
 New York NY 10019

Telephone: 212-469-4033  
 Fax: 212-469-4465

Ladies and Gentlemen:

The purpose of this letter agreement (this "Confirmation") is to confirm the terms and conditions of the Foreign Exchange Digital Option Transaction entered into between us ("Party A") and you ("Party B") on the Trade Date referred to below (the "Transaction"). The parties acknowledge and agree that B.T. Alex Brown has acted as introducing broker to Party A with respect to this Transaction. The Transaction consists of a number of elements as detailed below in Sections 1, 2(i) and (ii), 3(i) and (ii) and Section 4. Certain definitions and provisions which are applicable to more than one element of the Transaction are detailed in Section 1. The terms of the Transaction to which this Confirmation relates are as follows:

**1. Section 1 – General Terms**

Notional Amount:	USD 636,000.00
Trade Date:	27 November 2000
Termination Date:	15 December 2000, subject to modification in accordance with the Following Business Day Convention. In New York
Business Days:	
Calculation Agent:	Party A
Currency Pair:	EUR/GBP

**2. Section 1 – First Digital Option Transaction****(i) Initial Exchange Provisions:**

Party A Initial Exchange Amount:	Zero
Party B Initial Exchange Amount:	USD 318,000.00
Initial Exchange Date:	29 November 2000, subject to adjustment in accordance with the Following Business Day Convention.

**(ii) Final Exchange Provisions:**

Party A Final Exchange Amount:	USD 636,000.00
Party B Final Exchange Amount:	Zero
First Range Level:	EUR 0.6155 per GBP 1.0000
First Rate Determination Date:	Means the Termination Date
Final Exchange Date:	18 December 2000, subject to adjustment in accordance with the Following Business Day Convention.

(A) If the Spot Rate is, on the First Rate Determination Date at 10:00 a.m. local time in New York, greater than or equal to the First Range Level (such event being a "First Digital Option Trigger Event"), then upon the occurrence of such First Digital Option Trigger Event, (i) Party A shall pay to Party B the Party A Final Exchange Amount and (ii) Party B shall pay to Party A the Party B Final Exchange Amount. In determining whether a First Digital Option Trigger Event has occurred, a particular spot rate shall be disregarded if the Calculation Agent, acting in good faith considers that it would not be commercially reasonable to take account of it.

(B) Upon the occurrence of the First Digital Option Trigger Event, the Calculation Agent shall notify the other party orally (and, if requested, shall confirm such notice in writing by telex or telecopy) of the occurrence of the First Digital Option Trigger Event and provide details of the occurrence of such First Digital Option Trigger Event. A failure to give such notice shall not, however, prejudice the occurrence of the First Digital Option Trigger Event.

36575ebab



**3. Section 1 – Second Digital Option Transaction****(i) Initial Exchange Provisions:**

Party A Initial Exchange Amount:	USD 314,820.00
Party B Initial Exchange Amount:	Zero
Initial Exchange Date:	29 November 2000, subject to adjustment in accordance with the Following Business Day Convention

**(ii) Final Exchange Provisions:**

Party A Final Exchange Amount:	Zero
Party B Final Exchange Amount:	USD 629,640.00
Second Range Level:	EUR 0.9157 per GBP 1.0000
Second Rate Determination Date:	Means the Termination Date
Final Exchange Date:	19 December 2000, subject to adjustment in accordance with the Following Business Day Convention

(A) If the Spot Rate is, on the Second Rate Determination Date at 10:00 a.m. local time in New York, greater than or equal to the Second Range Level (such event being a "Second Digital Option Trigger Event"), then upon the occurrence of such Second Digital Option Trigger Event, (i) Party A shall pay to Party B the Party A Final Exchange Amount and (ii) Party B shall pay to Party A the Party B Final Exchange Amount. In determining whether a Second Digital Option Trigger Event has occurred, a particular spot rate shall be disregarded if the Calculation Agent, acting in good faith considers that it would not be commercially reasonable to take account of it.

(B) Upon the occurrence of a Second Digital Option Trigger Event, the Calculation Agent shall notify the other party orally (and, if requested, shall confirm such notice in writing by telex or telecopy) of the occurrence of the Second Digital Option Trigger Event and provide details of the occurrence of such Second Digital Option Trigger Event. A failure to give such notice shall not however prejudice the occurrence of the Second Digital Option Trigger Event.

**Section 2 - Other Provisions**

(i) For the purposes of this Transaction only, the following provision shall apply:

"Subparagraph (ii) of Section 2 (c) of the ISDA Form shall not apply to the First Digital Option Transaction and the Second Digital Option Transaction.

**(ii) Offices:**

- (a) The Office of Party A for the Transaction is New York; and
- (b) The Office of Party B for the Transaction is Delaware.

**3. Representations:**

Each party represents to the other party as of the date that it enters into this Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for this Transaction):

- (i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into this Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party including any affiliate or subsidiary thereof as investment advice or as a recommendation to enter into this Transaction, it being understood that information and explanations related to the terms and conditions of this Transaction shall not be considered to be investment advice or a recommendation to enter into the Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of this Transaction.

NOV-29-2008 01:08

DEUTSCHE BANK NY

212 469 4466 P.22

- (ii) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms and conditions and risks of this Transaction. It is also capable of assuming, and assumes, the risks of the Transaction.
- (iii) **Status of Parties.** The other party is not acting as a fiduciary for or adviser to it in respect of this Transaction.

#### 4. ISDA Agreement:

If you and we are parties to either an ISDA Interest Rate and Currency Exchange Agreement (for which purposes this Transaction shall constitute a "Swap Transaction") or an ISDA Master Agreement (in each case an "Agreement") then this Confirmation supplements forms part of and is subject to such Agreement. If you and we are not yet parties to an Agreement then this Confirmation evidences a complete and binding agreement between Party A and Party B as to the terms of the Transaction to which this Confirmation relates. In addition Party A and Party B agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of the ISDA Master Agreement (Multicurrency-Cross Border) (the "ISDA Form") with such modifications as you and we will in good faith agree. Upon execution by Party A and Party B of such an agreement, this Confirmation will supplement, form part of, and be subject to that agreement. All provisions contained or incorporated by reference in that agreement upon its execution will govern this Confirmation. Until we execute and deliver that agreement, this Confirmation, together with all other documents referring to the ISDA Form (each a "Confirmation") confirming transactions (each a "Transaction") entered into between us (notwithstanding anything to the contrary in a Confirmation) shall supplement, form a part of, and be subject to an agreement in the form of the ISDA Form as if we had executed an agreement on the Trade Date of the first such Transaction between us in such form with the Schedule thereto (i) specifying only that (a) the governing law is New York law and (b) the Termination Currency is U.S. Dollars, (ii) incorporating the addition to the definition of "Indemnifiable Tax" contained in (page 48 of) the ISDA "Users Guide to the 1992 ISDA Master Agreements" and (iii) incorporating any other modifications to the ISDA form specified below.

#### 5. Definitions:

The definitions and provisions contained in the 1991 ISDA Definitions (as amended by the 1997 Supplement) as published by the International Swaps and Derivatives Association, Inc (the "Swap Definitions") and in the 1998 FX and Currency Option Definitions (the "FX Definitions") as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee (the "1998 Definitions", and together with the Swap Definitions, the "Definitions"), are incorporated into this Confirmation. In the event of any inconsistency between the Swap Definitions and the 1998 Definitions, the 1998 Definitions will govern. In the event of any inconsistency between either set of Definitions and this Confirmation, this Confirmation will govern.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us or by sending to us a letter or telex substantially similar to this letter, which letter or telex sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms.

Yours faithfully,  
for and on behalf of  
Deutsche Bank AG, New York

By:   
Name: Rick Pychewicz  
Title: VP

By:   
Name: Andrew Bayley  
Title: Associate

Confirmed as of the date first above written:  
V2 Investments LLC

By:   
Name: Paul Vadovolis, Member  
Authorised Signatory

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Authorised Signatory

For any query relating to this Confirmation please contact : 212-489-4033. Please sign and fax to 212-489-4466. Thank you.

# **EXHIBIT 18**

NOV-29-2000 01:09

DEUTSCHE BANK NY

212 469 4466 P.23

**Deutsche Bank AG New York Branch**

28 November, 2000

**Foreign Exchange Digital Option Transaction**  
 Our ref: 38578

V3 Investments LLC  
 Care of Craig Brubaker  
 DB Alex Brown  
 200 Crescent Court, Suite 500  
 Dallas, Texas 75201  
 214-740-7777

Deutsche Bank AG New York Branch  
 1290 Ave. of the Americas  
 New York NY 10019

Telephone: 212-469-4033  
 Fax: 212-469-4466

Ladies and Gentlemen:

The purpose of this letter agreement (this "Confirmation") is to confirm the terms and conditions of the Foreign Exchange Digital Option Transaction entered into between us ("Party A") and you ("Party B") on the Trade Date referred to below (the "Transaction"). The parties acknowledge and agree that B.T. Alex Brown has acted as introducing broker to Party A with respect to this Transaction. The Transaction consists of a number of elements as detailed below in Sections 1, 2(i) and (ii), 3(i) and (ii) and Section 4. Certain definitions and provisions which are applicable to more than one element of the Transaction are detailed in Section 1. The terms of the Transaction to which this Confirmation relates are as follows:

**1. Section 1 - General Terms**

Notional Amount:	USD 636,000.00
Trade Date:	27 November 2000
Termination Date:	15 December 2000, subject to modification in accordance with the Following Business Day Convention.
Business Days:	In New York
Calculation Agent:	Party A
Currency Pair:	EUR/GBP

**2. Section 1 - First Digital Option Transaction****(i) Initial Exchange Provisions:**

Party A Initial Exchange Amount:	Zero
Party B Initial Exchange Amount:	USD 318,000.00
Initial Exchange Date:	29 November 2000, subject to adjustment in accordance with the Following Business Day Convention.

**(ii) Final Exchange Provisions:**

Party A Final Exchange Amount:	USD 636,000.00
Party B Final Exchange Amount:	Zero
First Range Level:	EUR .6155 per GBP 1.0000
First Rate Determination Date:	Means the Termination Date
Final Exchange Date:	19 December 2000, subject to adjustment in accordance with the Following Business Day Convention.

(A) If the Spot Rate is, on the First Rate Determination Date at 10:00 a.m. local time in New York, greater than or equal to the First Range Level (such event being a "First Digital Option Trigger Event"), then upon the occurrence of such First Digital Option Trigger Event, (i) Party A shall pay to Party B the Party A Final Exchange Amount and (ii) Party B shall pay to Party A the Party B Final Exchange Amount. In determining whether a First Digital Option Trigger Event has occurred, a particular spot rate shall be disregarded if the Calculation Agent, acting in good faith considers that it would not be commercially reasonable to take account of it.

(B) Upon the occurrence of the First Digital Option Trigger Event, the Calculation Agent shall notify the other party orally (and, if requested, shall confirm such notice in writing by telex or telecopy) of the occurrence of the First Digital Option Trigger Event and provide details of the occurrence of such First Digital Option Trigger Event. A failure to give such notice shall not, however, prejudice the occurrence of the First Digital Option Trigger Event.

NOV-29-2008 01:09

DEUTSCHE BANK NY

212 469 4466 P.24

**3. Section 1 - Second Digital Option Transaction****(i) Initial Exchange Provisions:**

Party A Initial Exchange Amount:	USD 314,820.00
Party B Initial Exchange Amount:	Zero
Initial Exchange Date:	28 November 2000, subject to adjustment in accordance with the Following Business Day Convention

**(ii) Final Exchange Provisions:**

Party A Final Exchange Amount:	Zero
Party B Final Exchange Amount:	USD 629,840.00
Second Range Level:	EUR 0.6157 per GBP 1.0000
Second Rate Determination Date:	Means the Termination Date
Final Exchange Date:	19 December 2000, subject to adjustment in accordance with the Following Business Day Convention

(A) If the Spot Rate is, on the Second Rate Determination Date at 10:00 a.m. local time in New York, greater than or equal to the Second Range Level (such event being a "Second Digital Option Trigger Event"), then upon the occurrence of such Second Digital Option Trigger Event, (i) Party A shall pay to Party B the Party A Final Exchange Amount and (ii) Party B shall pay to Party A the Party B Final Exchange Amount. In determining whether a Second Digital Option Trigger Event has occurred, a particular spot rate shall be disregarded if the Calculation Agent, acting in good faith considers that it would not be commercially reasonable to take account of it.

(B) Upon the occurrence of a Second Digital Option Trigger Event, the Calculation Agent shall notify the other party orally (and, if requested, shall confirm such notice in writing by telex or telecopy) of the occurrence of the Second Digital Option Trigger Event and provide details of the occurrence of such Second Digital Option Trigger Event. A failure to give such notice shall not however prejudice the occurrence of the Second Digital Option Trigger Event.

**Section 2 - Other Provisions****(i) For the purposes of this Transaction only, the following provision shall apply:**

"Subparagraph (ii) of Section 2 (c) of the ISDA Form shall not apply to the First Digital Option Transaction and the Second Digital Option Transaction.

**(ii) Offices:**

- (a) The Office of Party A for the Transaction is New York; and
- (b) The Office of Party B for the Transaction is Delaware.

**3. Representations:**

Each party represents to the other party as of the date that it enters into this Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for this Transaction):

- (i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into this Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party including any affiliate or subsidiary thereof as investment advice or as a recommendation to enter into this Transaction, it being understood that information and explanations related to the terms and conditions of this Transaction shall not be considered to be investment advice or a recommendation to enter into the Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of this Transaction.

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DEUTSCHE BANK NY

212 469 4466 P.25

(ii) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms and conditions and risks of this Transaction. It is also capable of assuming, and assumes, the risks of the Transaction.

(iii) **Status of Parties.** The other party is not acting as a fiduciary for or adviser to it in respect of this Transaction.

#### 4. ISDA Agreement:

If you and we are parties to either an ISDA Interest Rate and Currency Exchange Agreement (for which purposes this Transaction shall constitute a "Swap Transaction") or an ISDA Master Agreement (in each case an "Agreement") then this Confirmation supplements forms part of and is subject to such Agreement. If you and we are not yet parties to an Agreement then this Confirmation evidences a complete and binding agreement between Party A and Party B as to the terms of the Transaction to which this Confirmation relates. In addition Party A and Party B agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of the ISDA Master Agreement (Multicurrency-Cross Border) (the "ISDA Form") with such modifications as you and we will in good faith agree. Upon execution by Party A and Party B of such an agreement, this Confirmation will supplement, form part of, and be subject to that agreement. All provisions contained or incorporated by reference in that agreement upon its execution will govern this Confirmation. Until we execute and deliver that agreement, this Confirmation, together with all other documents referring to the ISDA Form (each a "Confirmation") confirming transactions (each a "Transaction") entered into between us (notwithstanding anything to the contrary in a Confirmation) shall supplement, form a part of, and be subject to an agreement in the form of the ISDA Form as if we had executed an agreement on the Trade Date of the first such Transaction between us in such form with the Schedule thereto (i) specifying only that (a) the governing law is New York law and (b) the Termination Currency is U.S. Dollars, (ii) incorporating the addition to the definition of "Indemnifiable Tax" contained in (page 48 of) the ISDA "Users Guide to the 1992 ISDA Master Agreements" and (iii) incorporating any other modifications to the ISDA form specified below.

#### 5. Definitions:

The definitions and provisions contained in the 1991 ISDA Definitions (as amended by the 1997 Supplement) as published by the International Swaps and Derivatives Association, Inc. (the "Swap Definitions") and in the 1998 FX and Currency Option Definitions (the "FX Definitions") as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee (the "1998 Definitions", and together with the Swap Definitions, the "Definitions"), are incorporated into this Confirmation. In the event of any inconsistency between the Swap Definitions and the 1998 Definitions, the 1998 Definitions will govern. In the event of any inconsistency between either set of Definitions and this Confirmation, this Confirmation will govern.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us or by sending to us a letter or telex substantially similar to this letter, which letter or telex sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms.

Yours faithfully,

for and on behalf of  
Deutsche Bank AG, New York

By:   
Name: Rick Pychawitz  
Title: VP

Confirmed as of the date first above written:  
V3 Investments LLC

By:   
Name: Jim Vadevoulis, Member  
Authorised Signatory

By:   
Name: Andrew Bayley  
Title: Associate

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Authorised Signatory

For any query relating to this Confirmation please contact : 212-469-4033. Please sign and fax to 212-469-4466. Thank you.

# **EXHIBIT 19**

**Deutsche Bank AG New York Branch**

28 November, 2000

**Foreign Exchange Digital Option Transaction**  
 Our ref: 36568

TR1 Investments LLC  
 Care of Craig Brubaker  
 DB Alex Brown  
 200 Crescent Court, Suite 500  
 Dallas, Texas 75201  
 214-740-7777

Deutsche Bank AG New York Branch  
 1290 Ave. of the Americas  
 New York NY 10019

Telephone: 212-460-4033  
 Fax: 212-460-4466  
 Swift: DEUT US 33

Ladies and Gentlemen:

The purpose of this letter agreement (this "Confirmation") is to confirm the terms and conditions of the Foreign Exchange Digital Option Transaction entered into between us ("Party A") and you ("Party B") on the Trade Date referred to below (the "Transaction"). The parties acknowledge and agree that B.T. Alex Brown has acted as introducing broker to Party A with respect to this Transaction. The Transaction consists of a number of elements as detailed below in Sections 1, 2(i) and (ii), 3(i) and (ii) and Section 4. Certain definitions and provisions which are applicable to more than one element of the Transaction are detailed in Section 1. The terms of the Transaction to which this Confirmation relates are as follows:

**1. Section 1 – General Terms**

Notional Amount:	USD 20,542,000.00
Trade Date:	27 November 2000
Termination Date:	16 December 2000, subject to modification in accordance with the Following Business Day Convention.
Business Days:	In New York
Calculation Agent:	Party A
Currency Pair:	EUR/JPY

**2. Section 1 – First Digital Option Transaction****(i) Initial Exchange Provisions:**

Party A Initial Exchange Amount:	Zero
Party B Initial Exchange Amount:	USD 10,271,000.00
Initial Exchange Date:	29 November 2000, subject to adjustment in accordance with the Following Business Day Convention.

**(ii) Final Exchange Provisions:**

Party A Final Exchange Amount:	USD 20,542,000.00
Party B Final Exchange Amount:	Zero
First Range Level:	JPY 98.40 per EUR 1.00
First Rate Determination Date:	Means the Termination Date
Final Exchange Date:	19 December 2000, subject to adjustment in accordance with the Following Business Day Convention.

(A) If the Spot Rate is, on the First Rate Determination Date at 10:00 a.m. local time in New York, greater than or equal to the First Range Level (such event being a "First Digital Option Trigger Event"), then upon the occurrence of such First Digital Option Trigger Event, (i) Party A shall pay to Party B the Party A Final Exchange Amount and (ii) Party B shall pay to Party A the Party B Final Exchange Amount. In determining whether a First Digital Option Trigger Event has occurred, a particular spot rate shall be disregarded if the Calculation Agent, acting in good faith considers that it would not be commercially reasonable to take account of it.

(B) Upon the occurrence of the First Digital Option Trigger Event, the Calculation Agent shall notify the other party orally (and, if requested, shall confirm such notice in writing by telex or telecopy) of the occurrence of the First Digital Option Trigger Event and provide details of the occurrence of such First Digital Option Trigger Event. A failure to give such notice shall not, however, prejudice the occurrence of the First Digital Option Trigger Event.



NOV-29-2000 01:05

DEUTSCHE BANK NY

212 469 4466 P.12

**3. Section 1 – Second Digital Option Transaction****(i) Initial Exchange Provisions:**

Party A Initial Exchange Amount:	USD 10,168,290.00
Party B Initial Exchange Amount:	Zero
Initial Exchange Date:	29 November 2000, subject to adjustment in accordance with the Following Business Day Convention

**(ii) Final Exchange Provisions:**

Party A Final Exchange Amount:	Zero
Party B Final Exchange Amount:	USD 20,338,580.00
Second Range Level:	JPY 96.42 per EUR 1.0000
Second Rate Determination Date:	Means the Termination Date
Final Exchange Date:	19 December 2000, subject to adjustment in accordance with the Following Business Day Convention

(A) If the Spot Rate is, on the Second Rate Determination Date at 10:00 a.m. local time in New York, greater than or equal to the Second Range Level (such event being a "Second Digital Option Trigger Event"), then upon the occurrence of such Second Digital Option Trigger Event, (i) Party A shall pay to Party B the Party A Final Exchange Amount and (ii) Party B shall pay to Party A the Party B Final Exchange Amount. In determining whether a Second Digital Option Trigger Event has occurred, a particular spot rate shall be disregarded if the Calculation Agent, acting in good faith considers that it would not be commercially reasonable to take account of it.

(B) Upon the occurrence of a Second Digital Option Trigger Event, the Calculation Agent shall notify the other party orally (and, if requested, shall confirm such notice in writing by telex or telecopy) of the occurrence of the Second Digital Option Trigger Event and provide details of the occurrence of such Second Digital Option Trigger Event. A failure to give such notice shall not however prejudice the occurrence of the Second Digital Option Trigger Event.

**Section 2 - Other Provisions****(i) For the purposes of this Transaction only, the following provision shall apply:**

\*Subparagraph (ii) of Section 2 (c) of the ISDA Form shall not apply to the First Digital Option Transaction and the Second Digital Option Transaction.

**(ii) Offices:**

- (a) The Office of Party A for the Transaction is New York; and
- (b) The Office of Party B for the Transaction is Delaware.

**3. Representations:**

Each party represents to the other party as of the date that it enters into this Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for this Transaction):

- (i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into this Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party including any affiliate or subsidiary thereof as investment advice or as a recommendation to enter into this Transaction, it being understood that information and explanations related to the terms and conditions of this Transaction shall not be considered to be investment advice or a recommendation to enter into the Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of this Transaction.

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DEUTSCHE BANK NY

212 469 4466 P.13

- (ii) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms and conditions and risks of this Transaction. It is also capable of assuming, and assumes, the risks of the Transaction.
- (iii) **Status of Parties.** The other party is not acting as a fiduciary for or adviser to it in respect of this Transaction.

#### 4. ISDA Agreement:

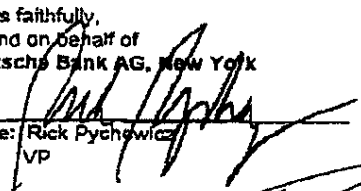
If you and we are parties to either an ISDA Interest Rate and Currency Exchange Agreement (for which purposes this Transaction shall constitute a "Swap Transaction") or an ISDA Master Agreement (in each case an "Agreement") then this Confirmation supplements forms part of and is subject to such Agreement. If you and we are not yet parties to an Agreement then this Confirmation evidences a complete and binding agreement between Party A and Party B as to the terms of the Transaction to which this Confirmation relates. In addition Party A and Party B agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of the ISDA Master Agreement (Multicurrency-Cross Border) (the "ISDA Form") with such modifications as you and we will in good faith agree. Upon execution by Party A and Party B of such an agreement, this Confirmation will supplement, form part of, and be subject to that agreement. All provisions contained or incorporated by reference in that agreement upon its execution will govern this Confirmation. Until we execute and deliver that agreement, this Confirmation, together with all other documents referring to the ISDA Form (each a "Confirmation") confirming transactions (each a "Transaction") entered into between us (notwithstanding anything to the contrary in a Confirmation) shall supplement, form a part of, and be subject to an agreement in the form of the ISDA Form as if we had executed an agreement on the Trade Date of the first such Transaction between us in such form with the Schedule thereto (i) specifying only that (a) the governing law is New York law and (b) the Termination Currency is U.S. Dollars, (ii) incorporating the addition to the definition of "Indemnifiable Tax" contained in (page 48 of) the ISDA "Users Guide to the 1992 ISDA Master Agreements" and (iii) incorporating any other modifications to the ISDA form specified below.

#### 5. Definitions:

The definitions and provisions contained in the 1991 ISDA Definitions (as amended by the 1997 Supplement) as published by the International Swaps and Derivatives Association, Inc (the "Swap Definitions") and in the 1998 FX and Currency Option Definitions (the "FX Definitions") as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee (the "1998 Definitions", and together with the Swap Definitions, the "Definitions"), are incorporated into this Confirmation. In the event of any inconsistency between the Swap Definitions and the 1998 Definitions, the 1998 Definitions will govern. In the event of any inconsistency between either set of Definitions and this Confirmation, this Confirmation will govern.

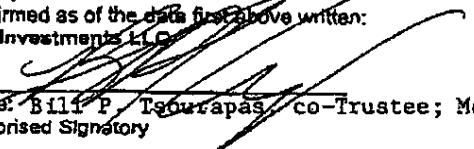
Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us or by sending to us a letter or telex substantially similar to this letter, which letter or telex sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms.

Yours faithfully,  
for and on behalf of  
Deutsche Bank AG, New York

By:   
Name: Rick Pychewicz  
Title: VP

By:   
Name: Andrew Bayley  
Title: Associate

Confirmed as of the date first above written:  
TR1 Investments LLC

By:   
Name: Bill P. Teourapas, co-Trustee; Member  
Authorised Signatory

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Authorised Signatory

For any query relating to this Confirmation please contact : 212-469-4033. Please sign and fax to 212-469-4466. Thank you.

# **EXHIBIT 20**

NGU-29-2000 01:06

DEUTSCHE BANK NY

212 469 4466

P.14

**Deutsche Bank AG New York Branch**

28 November, 2000

**Foreign Exchange Digital Option Transaction**  
 Our ref: 36573

TR2 Investments LLC  
 Care of Craig Brubaker  
 DB Alex Brown  
 200 Crescent Court, Suite 500  
 Dallas, Texas 75201  
 214-740-7777

Deutsche Bank AG New York Branch  
 1290 Ave. of the Americas  
 New York NY 10019

Telephone: 212-469-4033  
 Fax: 212-469-4466

Ladies and Gentlemen:

The purpose of this letter agreement (this "Confirmation") is to confirm the terms and conditions of the Foreign Exchange Digital Option Transaction entered into between us ("Party A") and you ("Party B") on the Trade Date referred to below (the "Transaction"). The parties acknowledge and agree that B.T. Alex Brown has acted as introducing broker to Party A with respect to this Transaction. The Transaction consists of a number of elements as detailed below in Sections 1, 2(i) and (ii), 3(i) and (ii) and Section 4. Certain definitions and provisions which are applicable to more than one element of the Transaction are detailed in Section 1. The terms of the Transaction to which this Confirmation relates are as follows:

**1. Section 1 – General Terms**

Notional Amount:	USD 20,542,000.00
Trade Date:	27 November 2000
Termination Date:	15 December 2000, subject to modification in accordance with the Following Business Day Convention.
Business Days:	In New York
Calculation Agent:	Party A
Currency Pair:	EUR/GBP

**2. Section 1 – First Digital Option Transaction****(i) Initial Exchange Provisions:**

Party A Initial Exchange Amount:	Zero
Party B Initial Exchange Amount:	USD 10,271,000.00
Initial Exchange Date:	29 November 2000, subject to adjustment in accordance with the Following Business Day Convention.

**(ii) Final Exchange Provisions:**

Party A Final Exchange Amount:	USD 20,542,000.00
Party B Final Exchange Amount:	Zero
First Range Level:	EUR .6155 per GBP 1.0000
First Rate Determination Date:	Means the Termination Date
Final Exchange Date:	19 December 2000, subject to adjustment in accordance with the Following Business Day Convention.

(A) If the Spot Rate is, on the First Rate Determination Date at 10:00 a.m. local time in New York, greater than or equal to the First Range Level (such event being a "First Digital Option Trigger Event"), then upon the occurrence of such First Digital Option Trigger Event, (i) Party A shall pay to Party B the Party A Final Exchange Amount and (ii) Party B shall pay to Party A the Party B Final Exchange Amount. In determining whether a First Digital Option Trigger Event has occurred, a particular spot rate shall be disregarded if the Calculation Agent, acting in good faith considers that it would not be commercially reasonable to take account of it.

(B) Upon the occurrence of the First Digital Option Trigger Event, the Calculation Agent shall notify the other party orally (and, if requested, shall confirm such notice in writing by telex or telecopy) of the occurrence of the First Digital Option Trigger Event and provide details of the occurrence of such First Digital Option Trigger Event. A failure to give such notice shall not, however, prejudice the occurrence of the First Digital Option Trigger Event.

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DEUTSCHE BANK NY

212 469 4466 P.15

**3. Section 1 - Second Digital Option Transaction****(i) Initial Exchange Provisions:**

Party A Initial Exchange Amount:	USD 10,168,290.00
Party B Initial Exchange Amount:	Zero
Initial Exchange Date:	29 November 2000, subject to adjustment in accordance with the Following Business Day Convention

**(ii) Final Exchange Provisions:**

Party A Final Exchange Amount:	Zero
Party B Final Exchange Amount:	USD 20,336,580.00
Second Range Level:	EUR 0.8157 per GBP 1.0000
Second Rate Determination Date:	Means the Termination Date
Final Exchange Date:	19 December 2000, subject to adjustment in accordance with the Following Business Day Convention

(A) If the Spot Rate is, on the Second Rate Determination Date at 10:00 a.m. local time in New York, greater than or equal to the Second Range Level (such event being a "Second Digital Option Trigger Event"), then upon the occurrence of such Second Digital Option Trigger Event, (i) Party A shall pay to Party B the Party A Final Exchange Amount and (ii) Party B shall pay to Party A the Party B Final Exchange Amount. In determining whether a Second Digital Option Trigger Event has occurred, a particular spot rate shall be disregarded if the Calculation Agent, acting in good faith considers that it would not be commercially reasonable to take account of it.

(B) Upon the occurrence of a Second Digital Option Trigger Event, the Calculation Agent shall notify the other party orally (and, if requested, shall confirm such notice in writing by telex or telecopy) of the occurrence of the Second Digital Option Trigger Event and provide details of the occurrence of such Second Digital Option Trigger Event. A failure to give such notice shall not however prejudice the occurrence of the Second Digital Option Trigger Event.

**Section 2 - Other Provisions****(i) For the purposes of this Transaction only, the following provision shall apply:**

"Subparagraph (ii) of Section 2 (c) of the ISDA Form shall not apply to the First Digital Option Transaction and the Second Digital Option Transaction.

**(ii) Offices:**

- (a) The Office of Party A for the Transaction is New York; and
- (b) The Office of Party B for the Transaction is Delaware.

**3. Representations:**

Each party represents to the other party as of the date that it enters into this Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for this Transaction):

- (i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into this Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party including any affiliate or subsidiary thereof as investment advice or as a recommendation to enter into this Transaction, it being understood that information and explanations related to the terms and conditions of this Transaction shall not be considered to be investment advice or a recommendation to enter into the Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of this Transaction.

- (i) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms and conditions and risks of this Transaction. It is also capable of assuming, and assumes, the risks of the Transaction.
- (ii) **Status of Parties.** The other party is not acting as a fiduciary for or adviser to it in respect of this Transaction.

**4. ISDA Agreement:**

If you and we are parties to either an ISDA Interest Rate and Currency Exchange Agreement (for which purposes this Transaction shall constitute a "Swap Transaction") or an ISDA Master Agreement (in each case an "Agreement") then this Confirmation supplements forms part of and is subject to such Agreement. If you and we are not yet parties to an Agreement then this Confirmation evidences a complete and binding agreement between Party A and Party B as to the terms of the Transaction to which this Confirmation relates. In addition Party A and Party B agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of the ISDA Master Agreement (Multicurrency-Cross Border) (the "ISDA Form") with such modifications as you and we will in good faith agree. Upon execution by Party A and Party B of such an agreement, this Confirmation will supplement, form part of, and be subject to that agreement. All provisions contained or incorporated by reference in that agreement upon its execution will govern this Confirmation. Until we execute and deliver that agreement, this Confirmation, together with all other documents referring to the ISDA Form (each a "Confirmation") confirming transactions (each a "Transaction") entered into between us (notwithstanding anything to the contrary in a Confirmation) shall supplement, form a part of, and be subject to an agreement in the form of the ISDA Form as if we had executed an agreement on the Trade Date of the first such Transaction between us in such form with the Schedule thereto (i) specifying only that (a) the governing law is New York law and (b) the Termination Currency is U.S. Dollars, (ii) incorporating the addition to the definition of "Indemnifiable Tax" contained in (page 48 of) the ISDA "Users Guide to the 1992 ISDA Master Agreements" and (iii) incorporating any other modifications to the ISDA form specified below.

**5. Definitions:**

The definitions and provisions contained in the 1991 ISDA Definitions (as amended by the 1997 Supplement) as published by the International Swaps and Derivatives Association, Inc (the "Swap Definitions") and in the 1998 FX and Currency Option Definitions (the "FX Definitions") as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee (the "1998 Definitions", and together with the Swap Definitions, the "Definitions"), are incorporated into this Confirmation. In the event of any inconsistency between the Swap Definitions and the 1998 Definitions, the 1998 Definitions will govern. In the event of any inconsistency between either set of Definitions and this Confirmation, this Confirmation will govern.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us or by sending to us a letter or telex substantially similar to this letter, which letter or telex sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms.

Yours faithfully,  
for and on behalf of  
Deutsche Bank AG, New York

By:   
Name: Rick Pychowitz  
Title: VP

Confirmed as of the date first above written:  
TRZ Investments LLC

By:   
Name: Bill P. Tsourapas, co-Trustee; Member  
Authorised Signatory

By:   
Name: Andrew Bayley  
Title: Associate

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Authorised Signatory

For any query relating to this Confirmation please contact : 212-469-4033. Please sign and fax to 212-469-4466. Thank you.

# **EXHIBIT 21**

NOV-29-2000 01:03

DEUTSCHE BANK NY

212 469 4466 P.08

**Deutsche Bank AG New York Branch**

28 November, 2000

**Foreign Exchange Digital Option Transaction**  
Our ref: 36570

TR3 Investments LLC  
Care of Craig Brubaker  
DB Alex Brown  
200 Crescent Court, Suite 500  
Dallas, Texas 75201  
214-740-7777

Deutsche Bank AG New York Branch  
1290 Ave. of the Americas  
New York NY 10019

Telephone: 212-469-4033  
Fax: 212-469-4466  
Swift: DEUT US 33

Ladies and Gentlemen:

The purpose of this letter agreement (this "Confirmation") is to confirm the terms and conditions of the Foreign Exchange Digital Option Transaction entered into between us ("Party A") and you ("Party B") on the Trade Date referred to below (the "Transaction"). The parties acknowledge and agree that B.T. Alex Brown has acted as introducing broker to Party A with respect to this Transaction. The Transaction consists of a number of elements as detailed below in Sections 1, 2(i) and (ii), 3(i) and (ii) and Section 4. Certain definitions and provisions which are applicable to more than one element of the Transaction are detailed in Section 1. The terms of the Transaction to which this Confirmation relates are as follows:

**1. Section 1 - General Terms**

Notional Amount:	USD 20,542,000.00
Trade Date:	27 November 2000
Termination Date:	15 December 2000, subject to modification in accordance with the Following Business Day Convention.
Business Days:	In New York
Calculation Agent:	Party A
Currency Pair:	EUR/JPY

**2. Section 1 - First Digital Option Transaction****(i) Initial Exchange Provisions:**

Party A Initial Exchange Amount:	Zero
Party B Initial Exchange Amount:	USD 10,271,000.00
Initial Exchange Date:	29 November 2000, subject to adjustment in accordance with the Following Business Day Convention.

**(ii) Final Exchange Provisions:**

Party A Final Exchange Amount:	USD 20,542,000.00
Party B Final Exchange Amount:	Zero
First Range Level:	JPY 96.40 per EUR 1.00
First Rate Determination Date:	Means the Termination Date
Final Exchange Date:	19 December 2000, subject to adjustment in accordance with the Following Business Day Convention.

(A) If the Spot Rate is, on the First Rate Determination Date at 10:00 a.m. local time in New York, greater than or equal to the First Range Level (such event being a "First Digital Option Trigger Event"), then upon the occurrence of such First Digital Option Trigger Event, (i) Party A shall pay to Party B the Party A Final Exchange Amount and (ii) Party B shall pay to Party A the Party B Final Exchange Amount. In determining whether a First Digital Option Trigger Event has occurred, a particular spot rate shall be disregarded if the Calculation Agent, acting in good faith considers that it would not be commercially reasonable to take account of it.

(B) Upon the occurrence of the First Digital Option Trigger Event, the Calculation Agent shall notify the other party orally (and, if requested, shall confirm such notice in writing by telex or telecopy) of the occurrence of the First Digital Option Trigger Event and provide details of the occurrence of such First Digital Option Trigger Event. A failure to give such notice shall not, however, prejudice the occurrence of the First Digital Option Trigger Event.

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NOV-29-2000 01:04

DEUTSCHE BANK NY

212 463 4466 P.09

**3. Section 1 – Second Digital Option Transaction****(i) Initial Exchange Provisions:**

Party A Initial Exchange Amount:	USD 10,168,290.00
Party B Initial Exchange Amount:	Zero
Initial Exchange Date:	29 November 2000, subject to adjustment in accordance with the Following Business Day Convention

**(ii) Final Exchange Provisions:**

Party A Final Exchange Amount:	Zero
Party B Final Exchange Amount:	USD 20,338,580.00
Second Range Level:	JPY 98.42 per EUR 1.0000
Second Rate Determination Date:	Means the Termination Date
Final Exchange Date:	19 December 2000, subject to adjustment in accordance with the Following Business Day Convention

(A) If the Spot Rate is, on the Second Rate Determination Date at 10:00 a.m. local time in New York, greater than or equal to the Second Range Level (such event being a "Second Digital Option Trigger Event"), then upon the occurrence of such Second Digital Option Trigger Event, (i) Party A shall pay to Party B the Party A Final Exchange Amount and (ii) Party B shall pay to Party A the Party B Final Exchange Amount. In determining whether a Second Digital Option Trigger Event has occurred, a particular spot rate shall be disregarded if the Calculation Agent, acting in good faith considers that it would not be commercially reasonable to take account of it.

(B) Upon the occurrence of a Second Digital Option Trigger Event, the Calculation Agent shall notify the other party orally (and, if requested, shall confirm such notice in writing by telex or telecopy) of the occurrence of the Second Digital Option Trigger Event and provide details of the occurrence of such Second Digital Option Trigger Event. A failure to give such notice shall not however prejudice the occurrence of the Second Digital Option Trigger Event.

**Section 2 - Other Provisions**

(i) For the purposes of this Transaction only, the following provision shall apply:

"Subparagraph (ii) of Section 2 (c) of the ISDA Form shall not apply to the First Digital Option Transaction and the Second Digital Option Transaction.

**(ii) Offices:**

- (a) The Office of Party A for the Transaction is New York; and
- (b) The Office of Party B for the Transaction is Delaware.

**3. Representations:**

Each party represents to the other party as of the date that it enters into this Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for this Transaction):

- (i) **Non-Rollance.** It is acting for its own account, and it has made its own independent decisions to enter into this Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party including any affiliate or subsidiary thereof as investment advice or as a recommendation to enter into this Transaction, it being understood that information and explanations related to the terms and conditions of this Transaction shall not be considered to be investment advice or a recommendation to enter into the Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of this Transaction.

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DEUTSCHE BANK NY

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- (ii) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms and conditions and risks of this Transaction. It is also capable of assuming, and assumes, the risks of the Transaction.
- (iii) **Status of Parties.** The other party is not acting as a fiduciary for or advisor to it in respect of this Transaction.

#### 4. ISDA Agreement:

If you and we are parties to either an ISDA Interest Rate and Currency Exchange Agreement (for which purposes this Transaction shall constitute a "Swap Transaction") or an ISDA Master Agreement (in each case an "Agreement") then this Confirmation supplements forms part of and is subject to such Agreement. If you and we are not yet parties to an Agreement then this Confirmation evidences a complete and binding agreement between Party A and Party B as to the terms of the Transaction to which this Confirmation relates. In addition Party A and Party B agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of the ISDA Master Agreement (Multicurrency-Cross Border) (the "ISDA Form") with such modifications as you and we will in good faith agree. Upon execution by Party A and Party B of such an agreement, this Confirmation will supplement, form part of, and be subject to that agreement. All provisions contained or incorporated by reference in that agreement upon its execution will govern this Confirmation. Until we execute and deliver that agreement, this Confirmation, together with all other documents referring to the ISDA Form (each a "Confirmation") confirming transactions (each a "Transaction") entered into between us (notwithstanding anything to the contrary in a Confirmation) shall supplement, form a part of, and be subject to an agreement in the form of the ISDA Form as if we had executed an agreement on the Trade Date of the first such Transaction between us in such form with the Schedule thereto (i) specifying only that (a) the governing law is New York law and (b) the Termination Currency is U.S. Dollars, (ii) incorporating the addition to the definition of "Indemnifiable Tax" contained in (page 48 of) the ISDA "Users Guide to the 1992 ISDA Master Agreements" and (iii) incorporating any other modifications to the ISDA form specified below.

#### 5. Definitions:

The definitions and provisions contained in the 1991 ISDA Definitions (as amended by the 1997 Supplement) as published by the International Swaps and Derivatives Association, Inc. (the "Swap Definitions") and in the 1998 FX and Currency Option Definitions (the "FX Definitions") as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee (the "1998 Definitions", and together with the Swap Definitions, the "Definitions"), are incorporated into this Confirmation. In the event of any inconsistency between the Swap Definitions and the 1998 Definitions, the 1998 Definitions will govern. In the event of any inconsistency between either set of Definitions and this Confirmation, this Confirmation will govern.

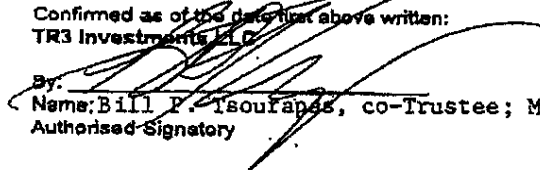
Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us or by sending to us a letter or telex substantially similar to this letter, which letter or telex sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms.

Yours faithfully,  
for and on behalf of  
Deutsche Bank AG, New York

By:   
Name: Rick Pychewicz  
Title: VP

By:   
Name: Andrew Bayley  
Title: Associate

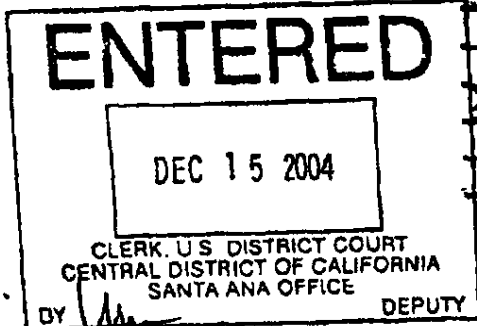
Confirmed as of the date first above written:  
TR3 Investments LLC

By:   
Name: Bill P. Tsoufanis, co-Trustee; Member  
Authorized Signatory

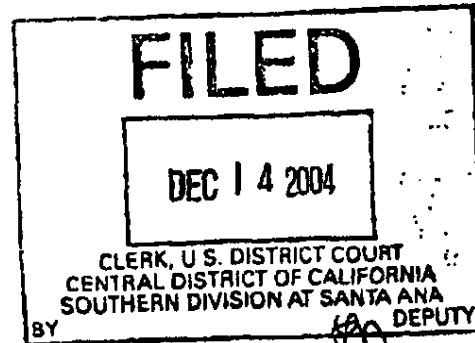
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Authorized Signatory

For any query relating to this Confirmation please contact : 212-469-4033. Please sign and fax to 212-469-4466. Thank you.

# **EXHIBIT 22**



X Priority  
X Send  
X Clsd  
X Enter  
X JS-5/JS-6  
X JS-2/JS-3



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THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(d).

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

X Docketed  
X Copies / NTC Sent  
X JS - 5 / JS - 6  
— JS - 2 / JS - 3  
— CLSD

12 J. PAUL REDDAM et al., ) Case No. SA CV 04-1227-GLT (MANx)  
13 Plaintiffs, )  
14 vs. ) ORDER ON PLAINTIFFS' MOTION TO  
15 KPMG LLP et al., ) REMAND AND DEFENDANTS' MOTIONS TO  
16 Defendants. ) COMPEL ARBITRATION OR STAY  
17 ) PROCEEDINGS

18 Among other things, the Court holds that, under appropriate  
19 circumstances, a non-signatory to an arbitration agreement may compel  
20 arbitration under the theory of contractual right or the theory of  
21 equitable estoppel.

22 I. BACKGROUND

23 Seeking to sell his corporation while minimizing his tax  
24 liability, Plaintiff consulted Defendants, which developed and  
25 implemented three tax strategies known as the Offshore Portfolio  
26 Investment Strategy ("OPIS"), the Bond Linked Issue Premium Structure  
27 ("BLIPS"), and Presidio/Greenvest 2001. Defendants' strategies  
28 allegedly resulted in huge tax liabilities, compelling Plaintiffs to

(40)

sue. In the Complaint, Plaintiffs allege professional negligence, legal malpractice, breach of fiduciary duty, fraud, negligent misrepresentation, joint venture liability, and violation of California Business and Professions Code section 17200.

Here, Plaintiffs bring a motion to remand, and Defendants bring motions to compel arbitration or stay proceedings.

## II. DISCUSSION

### A. Remand

Plaintiffs assert the sole basis for federal jurisdiction is 9 U.S.C. §§ 201-208, which allows for removal to federal court "[w]here the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention." 9 U.S.C. § 205 (1999) (emphasis added). Plaintiffs argue their claims against Defendant Deutsche Bank A.G. do not "relate to an arbitration agreement"; therefore, there is no basis for federal jurisdiction and remand is proper.

The central issue is whether this action "relates to" the arbitration clause. Plaintiffs deny any relation, arguing they have an arbitration agreement with only Deutsche Bank Securities, Inc. because their agreement is expressly limited to "controversies which may arise between us concerning any transaction of construction, performance or breach of this or any agreement between us . . . ." (Burgunder Decl. Ex. 1 (emphases added).)

The standard for what satisfies the "relates to" requirement, however, is broad. In Beiser v. Weyler, the Fifth Circuit stated: whenever an arbitration agreement falling under the Convention could conceivably affect the outcome of the plaintiff's case, the agreement "relates to" the plaintiff's suit. Thus, the

1 district court will have jurisdiction under § 205 over just  
2 about any suit in which a defendant contends [] an arbitration  
3 clause falling under the Convention provides a defense.  
4 284 F.3d 665, 666, 669 (5th Cir. 2002). The Fifth Circuit  
5 continued: "In allowing removal whenever the arbitration clause  
6 could conceivably impact the disposition of the case, we make it  
7 easy, not hard, for defendants to remove. . . . [E]asy removal is  
8 exactly what Congress intended in § 205." Id. at 674.

9 In light of this "easy" standard, this Court holds the arbitration  
10 agreement Plaintiffs entered into with Deutsche Bank Securities, Inc.  
11 "relates to" Plaintiffs' claims against Defendant Deutsche Bank A.G.  
12 For example, the arbitration agreement (or Customer's Agreement) enabled  
13 Plaintiffs to implement a number of transactions relevant to this  
14 action. (Compl. ¶ 35 ("To effectuate the OPIS tax strategy [in this  
15 action] . . . Reddam Trust opened an account with Deutsche Bank in late  
16 May 1999 . . . ."); Reddam Decl. Ex. B (listing the "account opening  
17 forms," or Customer's Agreement, as a "Condition Precedent").)

18 In short, where, as here, the Customer's Agreement enabled  
19 Plaintiffs to implement the relevant transactions in this action, it is  
20 at minimum "conceivable" that the arbitration clause will affect the  
21 outcome of this action.

22 Alternatively, Plaintiffs contend § 205 -- Defendants' sole basis  
23 for federal jurisdiction -- applies only if the agreement is itself an  
24 international agreement; here, Plaintiffs argue the agreement is purely  
25 domestic. Consequently, Plaintiffs conclude § 205 does not apply and  
26 there is no basis for federal jurisdiction.

27 Plaintiffs are mistaken. An "international arbitration agreement"  
28 per se is not necessary; rather, for the Convention and § 205 to apply,

1 the commercial relationship out of which the agreement arises need only  
2 involve property located abroad, envision performance abroad, or  
3 otherwise relate to a foreign state. 9 U.S.C. § 202; e.g.,  
4 Freudensprung v. Offshore Technical Servs., Inc., 379 F.3d 327, 340 (5th  
5 Cir. 2004).

6 Here, the facts indicate the agreement involved property located  
7 abroad. For example, Plaintiffs allege the "OPIS strategy involved an  
8 investment by the KPMG client in a foreign bank's stock [and] the  
9 purchase of call options on the same foreign bank's stock." Plaintiffs  
10 continue: an "off-shore limited partnership was set up to engage in  
11 highly leveraged purchases of stock in the same foreign bank, using  
12 proceeds of a loan transaction with that bank." (E.g., Compl. ¶¶ 19-20  
13 (emphases added).)

14 Plaintiffs also envisioned performance abroad, as demonstrated by  
15 Plaintiffs' plan to borrow \$83.3 million principal and \$50 million  
16 premium in a loan from Deutsche Bank A.G. -- a foreign bank -- to fund  
17 the BLIPS tax strategy. (Compl. ¶ 45.) Given the "easy" removal  
18 standard articulated by Beiser, the Court holds the Convention and § 205  
19 apply.<sup>1/</sup>

20 Next, Plaintiffs contend that, even if the Court has jurisdiction  
21 over Defendant Deutsche Bank A.G., the claims against the other  
22 Defendants should be remanded. This contention is not well-taken.

23  
24 <sup>1/</sup> Plaintiffs also argue Defendant Deutsche Bank A.G. agreed  
25 to resolve disputes related to its financing activities in court.  
26 Upon reviewing the agreements Plaintiffs cite, the Court does not  
27 agree. Absent "clear and unequivocal" language, courts do not  
28 interpret forum selection clauses to waive removal rights under  
the Convention. McDermott Int'l, Inc. v. Lloyds Underwriters of  
London, 944 F.2d 1199, 1209-13 (5th Cir. 1991). Here, the  
language in the submission-to-jurisdiction clause does not  
address arbitration directly, or waive the right.

1 Because the Court has original jurisdiction over the claims against  
2 Defendant Deutsche Bank A.G., the Court also has original jurisdiction  
3 over the claims against all other Defendants. The Ninth Circuit has  
4 held that, where a federal statute provides for original jurisdiction  
5 over "an action or proceeding," the grant of original jurisdiction  
6 applies to the entire suit, not just certain claims or parties.  
7 Brockman v. Merabank, 40 F.3d 1013, 1015-17 (9th Cir. 1994); California  
8 v. Keating, 986 F.2d 346, 348 (9th Cir. 1993) ("The words 'action, suit,  
9 or proceeding' are not limited to specific claims, but are synonymous  
10 with the term 'case' in the constitutional sense . . . [the] terms  
11 'action' and 'case' refer to the same thing, i.e., the entirety of a  
12 civil proceeding . . . .") (internal citation omitted).

13 Here, the jurisdictional statute provides, "An action or  
14 proceeding falling under the Convention shall be deemed to arise under  
15 the laws and treaties of the United States. The district courts of the  
16 United States . . . shall have original jurisdiction over such an action  
17 or proceeding . . . ." 9 U.S.C. § 203 (emphases added). Consequently,  
18 because the claims against Defendant Deutsche Bank A.G. "relate to" an  
19 arbitration agreement subject to the Convention, the Court also has  
20 original jurisdiction over the entire "action or proceeding" under §  
21 205, including claims against the other Defendants.

22 In reply, Plaintiffs argue Brockman is inapplicable, as the  
23 statute in Brockman specifically "vest[ed] the district court with  
24 original jurisdiction over every claim in an action where the RTC is a  
25 party." 40 F.3d at 1015. Plaintiffs' argument is not convincing.  
26 Plaintiffs' quote is a summary of the Third and Eighth Circuits'  
27 conclusion as to the effect of the jurisdictional statute in Brockman;  
28 the statute, by its terms, did not provide original jurisdiction over



1 every claim.

2 In short, the Court retains jurisdiction over the claims against  
3 the other Defendants. Plaintiffs' motion to remand is denied.

4 B. Arbitration

5 The Federal Arbitration Act ("FAA") strongly favors arbitration.  
6 Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1131 (9th  
7 Cir. 2000). A court compels arbitration if the claim at issue is  
8 within the scope of a valid, enforceable agreement to arbitrate. 9  
9 U.S.C. §§ 3, 4. On a motion to compel arbitration, courts resolve any  
10 doubts in favor of arbitration. Moses H. Cone Mem'l Hosp. v. Mercury  
11 Constr. Corp., 460 U.S. 1, 24-25 (1983). If a court finds a party's  
12 claims are subject to arbitration, then the court may stay the action  
13 pending arbitration. 9 U.S.C. § 3.

14 1. Olson Lemons PC

15 Defendant Olson Lemons PC's motion to compel arbitration is based  
16 on different grounds from Defendants Deutsche Bank A.G.'s, Sidley Austin  
17 Brown & Wood's, and KPMG's motions. Its motion centers on whether an  
18 arbitration agreement exists between it and Plaintiffs.

19 Defendant sent Plaintiffs an opinion letter on the tax  
20 consequences of investments Plaintiffs desired to make. Defendant  
21 asserts the letter conditioned its use on Plaintiffs' agreement to  
22 arbitrate disputes pursuant to the FAA. Defendant argues that, even  
23 though Plaintiffs did not sign the letter, its requirement to arbitrate  
24 is enforceable, Nghiem v. NEC Elec. Inc., 25 F.3d 1437, 1438-39 (9th  
25 Cir. 1994), because Plaintiffs relied on it and reliance manifests  
26 acceptance of the contract's terms, including the arbitration clause.

27 Plaintiffs contend they received and acted on Defendant's advice  
28 almost one year before receiving the written opinion letter and

1 "unilateral arbitration provision," which was "never discussed with or  
2 agreed to by Mr. Reddam." (Pls.' Opp'n at 2; Reddam Decl. ¶ 6.)  
3 Plaintiffs argue they never agreed to the arbitration clause.

4 Under these facts, the parties agree the existence of an agreement  
5 to arbitrate is based on state law contract principles governing the  
6 formation of a contract. Cheng-Canindin v. Renaissance Hotel Assocs.,  
7 50 Cal. App. 4th 676, 683 (Ct. App. 1996).

8 Applying state law contract principles, the Court concludes  
9 Defendant's AAA arbitration clause is not enforceable because agreement  
10 to arbitrate cannot be inferred from the conduct of the parties. Here,  
11 the only mention of arbitration was about a year after Defendant's  
12 advice was given, relied upon, and acted on. When the arbitration  
13 clause was sent to Plaintiffs, they had already received, relied on, and  
14 paid for Defendant's services. As Defendant states, "It was too late  
15 for Mr. Reddam to reject the opinion letter . . . ." (Pls.' Opp'n at  
16 5.)<sup>2/</sup>

17 Defendant Olson Lemons PC's motion to compel arbitration is  
18 denied.<sup>3/</sup> Under the Court's ruling on Defendant Presidio's motion to  
19 stay, infra, this action is stayed as to Defendant Olson Lemons PC as  
20

21 <sup>2/</sup> Defendant, however, contends Nghiem holds "an unsigned  
22 writing is a sufficient basis to support the contractual  
23 arbitration obligation between the parties." Defendant is  
24 incorrect. While a signed writing is unnecessary, an unsigned  
25 writing, standing alone, is insufficient. Nghiem, 25 F.3d at  
26 1439-40 (finding an unsigned writing yet proceeding to analyze  
plaintiff's conduct to determine whether he impliedly assented to  
arbitrate, thereby indicating an unsigned writing, by itself, is  
not enough).

27 <sup>3/</sup> Olson Lemons does not make a non-signatory's motion to  
28 compel arbitration under the Deutsche Bank Securities, Inc.,  
arbitration agreement, as other defendants do.

1 well.

2 2. Defendants Deutsche Bank A.G., Sidley Austin Brown & Wood,  
3 and KPMG: Arbitration Compelled by Non-signatory

4 Plaintiffs and Deutsche Bank Securities, Inc. (not named as a  
5 defendant) entered into an arbitration agreement, which applies to "all  
6 controversies which may arise between us concerning any transaction . .  
7 . performance, or breach of this or any other agreement between us."  
8 (Burgunder Decl. Ex. 1.) Non-signatory Defendants Deutsche Bank A.G.,  
9 Sidley Austin Brown & Wood, and KPMG (non-signatories) seek arbitration  
10 under this agreement.

11 The Court holds that, if appropriate circumstances exist,  
12 arbitration may be compelled by a non-signatory to the arbitration  
13 agreement under either the theory of contractual right or the equitable  
14 estoppel theory.

15 a. The contractual right theory

16 While signatories to a contract containing an arbitration  
17 provision are generally the only ones bound by it, the Ninth Circuit  
18 Court of Appeals has recognized instances where a non-signatory may  
19 compel arbitration.

20 In 1993 the Court summarized Ninth Circuit rulings in Britton v.  
21 Co-op Banking Group, 4 F.3d 742 (9<sup>th</sup> Cir. 1993). The Court noted the  
22 Circuit has declined to adopt the judicial estoppel theory. Observing  
23 that the right to compel arbitration stems from a contractual right, the  
24 Court noted Ninth Circuit precedent holds "an entity that is neither a  
25 party to nor agent for nor beneficiary of the contract lacks standing to  
26 compel arbitration." Id. at 744. Applying this contractual right  
27 limitation, the Court observed non-signatory arbitration enforcement  
28 might be available to a third-party beneficiary, a successor in

1 interest, or a class of agents intended to benefit from the arbitration  
2 clause. Id. at 745-48.

3 In the decade since Britton, several district courts in the Ninth  
4 Circuit have applied the contractual right theory of non-signatory  
5 enforcement. Newport Petroleum, Inc., v. Tug Justine Foss, 1997  
6 WL876955 (W.D. Wash. 1997), relied on the rule that a successor in  
7 interest can enforce an arbitration clause in a contract signed by its  
8 predecessor. Citing the Britton case, Creative Telecommunications,  
9 Inc., v. Breeden, 120 F.Supp. 2d 1225, 1240 (D. Hawaii, 1999) held  
10 "federal courts have consistently afforded agents, employees, and  
11 representatives the benefit of arbitration agreements entered into by  
12 their principals to the extent that the alleged misconduct relates to  
13 their behavior as officers or directors or in their capacities as agents  
14 of the corporation."<sup>4/</sup>

15 The Court holds the conduct alleged by Plaintiff is sufficient  
16 under the contractual right theory to permit the non-signatories to  
17 compel arbitration in this case. Plaintiff alleges the non-defendant  
18 Deutsche Bank Securities, Inc., a signatory, and the non-signatory  
19 Defendants were agents of each other, and engaged in substantially  
20 interdependent and concerted misconduct. Deutsche Bank A.G. and  
21 Deutsche Bank Securities, Inc. are treated as a single entity, and  
22 referred to simply as "Deutsche Bank." Defendants are alleged to have  
23 formed a "de facto joint venture," and to have conspired together to  
24 devise and promote the transactions. All defendants are alleged to be  
25

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26 <sup>4/</sup>Other district court cases applying the Britton rules have  
27 dealt with a signatory seeking to enforce an arbitration clause  
28 against a non-signatory. Comer v. Micor, Inc., 278 F. Supp. 2d  
1030 (N.D. Cal. 2003); Ahtna Government Services Corp. v. 52  
Rausch, LLC, 2003 WL 403359 (N.D. Cal. 2003).

1 jointly and severally liable. Under the facts Plaintiff has alleged,  
2 the non-signatories may invoke the arbitration requirement.

3 b. The equitable estoppel theory

4 Even if the non-signatories did not qualify under Britton's  
5 contractual right theory, they qualify under the equitable estoppel  
6 theory.

7 Although the Ninth Circuit Court of Appeals has apparently not yet  
8 ruled on the subject, other circuits that have ruled on the point have  
9 held that, under appropriate facts, a non-signatory may compel  
10 arbitration under an equitable estoppel theory. See, e.g., Choctaw  
11 Generation Ltd. Partnership v. American Home Assur. Co., 271 F.3d 403,  
12 407 (2nd Cir. 2001); Grigson v. Creative Artists Agency L.L.C., 210 F.3d  
13 524, 528 (5th Cir. 2000); Sunkist Soft Drinks, Inc. v. Sunkist Growers,  
14 Inc., 10 F.3d 753, 757 (11th Cir. 1993); J.J. Ryan & Sons, Inc. v.  
15 Rhone Poulenc Textile, S.A., 863 F.2d 315, 320-21 (4th Cir. 1988);  
16 Hughes Masonry Co., Inc. v. Greater Clark County Sch. Bldg. Corp., 659  
17 F.2d 836, 841 n. 9 (7th Cir. 1981); see also Medical Air Technology  
18 Corp. v. Marwan Inv., Inc., 303 F.3d 11, 18-19 (1st Cir. 2002) (noting  
19 the availability of equitable estoppel to compel arbitration). This  
20 principle was recently adopted by at least one California state court.  
21 See, e.g., Metalclad Corp. v. Ventana Envtl. Org. P'ship, 109  
22 Cal.App.4th 1705, 1717 (2003). Equitable estoppel has been held  
23 appropriate where: (1) the complaint raises allegations of substantially  
24 interdependent and concerted misconduct by both a signatory and one or  
25 more non-signatories; and (2) this misconduct is founded in and  
26 intertwined with the underlying contractual obligations. MS Dealer Serv.  
27 Corp. v. Franklin, 177 F.3d 942, 947 (11th Cir. 1999).

28 "The circuits have been willing to estop a signatory from avoiding

1 arbitration with a nonsignatory when the issues the nonsignatory is  
2 seeking to resolve in arbitration are intertwined with the agreement  
3 that the estopped party has signed." Choctaw, supra, 271 F.3d at 406.  
4 If the non-signatories were not allowed to compel arbitration in these  
5 instances, "the arbitration proceedings between the two signatories  
6 would be rendered meaningless and the federal policy in favor of  
7 arbitration effectively thwarted." MS Dealer Serv. Corp. at id.  
8 (internal quotation marks omitted).

9 Several Ninth Circuit district courts have recognized and applied  
10 the equitable estoppel theory. Estate of Garcia v. Stonechange, Ltd.,  
11 1998 WL118177 (N.D. Cal. 1998) recognized equitable estoppel standing,  
12 and cited with approval Eleventh Circuit equitable estoppel cases,  
13 applicable when "obligations and duties are 'intimately founded in and  
14 intertwined with the underlying contract obligations.'" In a  
15 significant recent case citing the Fifth Circuit, Boston  
16 Telecommunications Group, Inc., v. Deloitte Touche Tohmatsu, 278 F. Supp  
17 2d 1041, 1048 (N.D. Cal. 2003) held a non-signatory may compel  
18 arbitration "'when the signatory to the contract containing an  
19 arbitration clause raises allegations of substantially interdependent  
20 and concerted misconduct by both the nonsignatory and one or more of the  
21 signatories to the contract.'" <sup>5/</sup>

22 The reasoning from the other circuits and district courts from  
23 this circuit is persuasive. There is no good reason to believe the  
24

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25  
26 <sup>5/</sup>Other Ninth Circuit district court cases have recognized  
27 the equitable estoppel theory, but held it did not apply under  
28 the facts of that particular case. Ahtna Government Services  
Corp. v. 52 Rausch, LLC, 2003 WL 403359 (N.D. Cal. 2003); Pacific  
Builders, Inc. v. Mitsui Trust & Banking Co., 57 F. Supp 2d 1018  
(D. Hawaii, 1999).

1 Ninth Circuit Court of Appeals would not recognize equitable estoppel as  
2 a theory for a non-signatory to compel arbitration in an appropriate  
3 case.

4 The Court holds that, under appropriate circumstances, a non-  
5 signatory to an arbitration agreement may compel arbitration under the  
6 theory of equitable estoppel. Under the allegations in this case, as  
7 stated above, the conditions for equitable estoppel are present. The  
8 non-signatory defendants may compel arbitration.

9 2. Whether the Agreement Covers the Dispute

10 Plaintiffs contend the agreement with Deutsche Bank Securities,  
11 Inc. does not cover the allegations in the Complaint. Plaintiffs argue  
12 the arbitration clause is narrow: textually, it is not only limited to  
13 controversies "between us concerning any transactions . . . or breach of  
14 the agreement or any other agreement between us," (Burgunder Decl. Ex.  
15 1), but the language covers only contract interpretation and performance  
16 claims, and cannot be construed to cover the tort claims at issue here.

17 Arbitration clauses in general, as well as clauses containing the  
18 phrase "relating to," are usually construed broadly; but arbitration  
19 clauses containing the phrases "arising from" or "arising out of" are  
20 usually construed narrowly. Tracer Research Corp. v. Nat'l Envtl.  
21 Servs. Co., 42 F.3d 1292, 1294-95 (9th Cir. 1994).

22 Here, the arbitration agreement states, "all controversies which  
23 may arise between us concerning any transaction . . . or breach of this  
24 or any other agreement between us . . . shall be determined by  
25 arbitration." (Burgunder Decl. Ex. 1 (emphasis added).) Plaintiffs  
26 appear to contend the "concerning any transaction" phrase is narrow  
27 because it specifies the types of disputes covered by the agreement.  
28 According to Plaintiffs, if the "arising from" language in Tracer

1 Research Corp. was narrow -- all disputes "arising from" the agreement -  
2 - then the "concerning" language here -- only specific types of  
3 disputes -- must also be narrow.

4 The Court disagrees. The general rule is to construe  
5 arbitration clauses expansively. Moses H. Cone Mem'l Hosp., 460 U.S. at  
6 24-25. In Tracer Research Corp., the Ninth Circuit held the phrases  
7 "arising from" or "arising out of" would trigger a narrow construction.  
8 Here, the agreement does not contain those phrases; therefore, the  
9 general rule applies, as does the Supreme Court's instruction to resolve  
10 any doubts in favor of arbitration. Id.

11 In sum, Defendants Deutsche Bank A.G.'s, Sidley Austin Brown &  
12 Wood's, and KPMG's motions to compel arbitration are granted."

13 C. Stay

14 A party to a suit in federal court may seek a stay of the action  
15 pending arbitration of the issues in the litigation. Wagner v. Stratton  
16 Oakmont, Inc., 83 F.3d 1046, 1048 (9th Cir. 1996).

17 Defendant Presidio asks the Court to stay this action pending the  
18 resolution of the arbitration. Defendant argues Plaintiffs' claims  
19 center on their allegation of a joint conspiracy to defraud. Given this  
20 commonality, Defendant contends allowing two proceedings to run  
21 concurrently would be inefficient and risk duplicative findings and  
22 inconsistent rulings. See, e.g., United States ex rel. Newton v.  
23 Neumann Carribean Int'l, Ltd., 750 F.2d 1422, 1427 (9th Cir. 1985)  
24 (noting the importance of "economy and efficiency" in determining the  
25

---

26 <sup>6/</sup> Defendant KPMG also argues the non-signatory Plaintiff  
27 (i.e., Zed Corporation) should be compelled to arbitrate.  
28 Plaintiffs do not appear to contest this argument. Having  
considered the merits of the argument, the Court grants Defendant  
KPMG's motion on this point.



1 propriety of a stay).

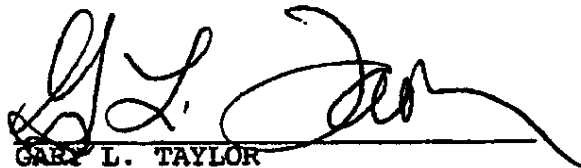
2 Here, Johnston v. Deutsche Bank (Civ. No. 03-5240) and Whipple v.  
3 Deutsche Bank (Civ. No. 03-5240) are on point and persuasive. In  
4 Johnston and Whipple -- two related cases involving claims against  
5 Deutsche Bank, Sidley Austin Brown & Wood, KPMG, and Presidio arising  
6 from plaintiff's participation in an investment strategy similar to the  
7 investment in this case -- the United States District Court for the  
8 Western District of Arkansas granted Deutsche Bank's motion to stay  
9 after finding the case against Presidio would involve "common questions  
10 of fact . . . within the scope of the arbitration agreement."  
11 (Presidio's Mot. at 4.) Like Johnston and Whipple, where plaintiff's  
12 conspiracy and aiding-and-abetting claims implicated common questions of  
13 fact, here Plaintiffs allege "joint venture liability" and "aiding and  
14 abetting breach of fiduciary duty." These allegations rebut Plaintiffs'  
15 assertion that no common questions apply to Defendant.

16 Defendant Presidio's motion to stay is granted.

17 III. DISPOSITION

18 Plaintiffs' motion to remand is DENIED. Defendants Deutsche Bank  
19 A.G.'s, Sidley Austin Brown & Wood's, and KPMG's motions to compel  
20 arbitration are GRANTED, and this action is STAYED pending completion of  
21 the arbitration. Defendant Olson Lemons PC's motion to compel  
22 arbitration is DENIED. Defendant Presidio's motion to stay is  
23 GRANTED.<sup>7/</sup>

24 DATED: December 14, 2004

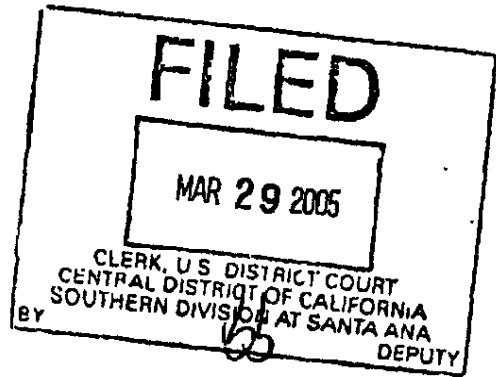
25   
26 GARY L. TAYLOR  
27 UNITED STATES DISTRICT JUDGE

28 <sup>7/</sup> Defendant Presidio's agreed motion for extension of time  
to respond to the Complaint is granted as well.

# **EXHIBIT 23**

ORIGINAL

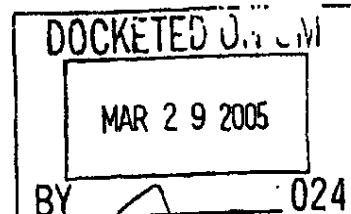
SEND



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

STEPHEN L. HANSEN,  
Plaintiff,  
vs.  
KPMG, LLP et al.,  
Defendants.

Case No. SA CV 04-10525-GLT (MANx)  
ORDER ON PLAINTIFF'S MOTION TO  
REMAND AND DEFENDANTS' MOTIONS TO  
COMPEL ARBITRATION OR STAY  
PROCEEDINGS



Remand is DENIED and the action is STAYED.

I. BACKGROUND

Plaintiff alleges Defendants conspired and fraudulently induced him to participate in an investment transaction known as "BLIPS." Now, Plaintiff moves to remand, and Defendants move to compel arbitration or stay proceedings.<sup>1/</sup>

<sup>1/</sup> The Court takes judicial notice of its December 14, 2004 Order in Reddam v. KPMG, LLP, SA CV 04-1227 GLT (MANx). The parties dispute whether the Reddam Order is applicable here. Defendants contend it is applicable because the arbitration clause in Reddam is identical to the arbitration clause here, and the issues the Court analyzed in its Reddam Order are almost

39

1 II. DISCUSSION

2 A. Motion to Remand

3 This action was removed under 9 U.S.C. § 205, allowing removal to  
4 federal court where an action in state court "relates to" an  
5 arbitration agreement under the Convention.

6 Plaintiff argues (1) this action does not relate to the  
7 arbitration agreement and (2) the agreement does not fall under the  
8 Convention.<sup>2/</sup>

9 1. Whether This Action Relates to the Arbitration Agreement

10 In Beiser v. Weyler,<sup>3/</sup> the Fifth Circuit elaborated on § 205's  
11 "relates to" requirement:

12 \_\_\_\_\_  
13 identical to the issues presented here. But Plaintiff argues the  
14 Reddam Order is not applicable because, in part, Deutsche Bank  
15 Securities Inc. (the signatory to the arbitration agreement) and  
16 Deutsche Bank (a related entity) have been dismissed with  
prejudice. The Court considers the Reddam Order for whatever  
applicability it has.

17 <sup>2/</sup> Plaintiff also argues remand is proper because he will  
18 not be bound by the arbitration agreement; that is, the non-  
19 signatory Defendants cannot compel arbitration under the theory  
20 of contractual right or the theory of equitable estoppel. The  
21 Court does not address this argument in the context of  
Plaintiff's motion to remand because the jurisdiction question  
under § 205 is distinct from whether Defendants can compel  
arbitration on the merits. See Beiser v. Weyler, 284 F.3d 665,  
670-72 (5th Cir. 2002).

22 <sup>3/</sup> Plaintiff argues Beiser is not controlling. According to  
23 Plaintiff, Beiser adopted a "low bar" for jurisdiction under §  
24 205 "because of the risk of jeopardizing the treaty obligations  
25 of the United States." (Pl.'s Reply at 4.) This concern,  
Plaintiff contends, is not implicated here.

26 In arriving at its conclusion, however, the Fifth Circuit  
27 did not rely on Plaintiff's concern. On the page Plaintiff  
28 cites, (Pl.'s Reply at 4 n.2), the Fifth Circuit based its  
holding on congressional intent and federalism concerns, not on  
the risk of jeopardizing treaty obligations. Beiser is on point  
and persuasive.

1 [W]henever an arbitration agreement falling under the Convention  
2 could conceivably affect the outcome of the plaintiff's case,  
3 the agreement "relates to" the plaintiff's suit. . . . [T]he  
4 district court will have jurisdiction under § 205 over just  
5 about any suit in which a defendant contends . . . an  
6 arbitration clause falling under the Convention provides a  
7 defense.

8 284 F.3d 665, 669 (5th Cir. 2002).

9 The Fifth Circuit set a "low bar" for jurisdiction under § 205:  
10 "In allowing removal whenever the arbitration clause could conceivably  
11 impact the disposition of the case, we make it easy, not hard, for  
12 defendants to remove. . . . [E]asy removal is exactly what Congress  
13 intended in § 205."<sup>4/</sup> Id.

14 In light of this "easy" standard, the Court finds the arbitration  
15 agreement Plaintiff entered into with Deutsche Bank Securities Inc.  
16 relates to Plaintiff's claims against Defendants. Here, the arbitration  
17 agreement enabled Plaintiff to implement the BLIPS transaction. (See,  
18 e.g., Compl. ¶¶ 15, 17, 113 (alleging the tax loss generated by BLIPS  
19 depended on the structure of a loan provided by Deutsche Bank, and the  
20 loan was "necessary" to the fraudulent scheme).) Given this enablement,  
21 the arbitration agreement will conceivably impact the disposition of  
22

23 <sup>4/</sup> Relying on Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th  
24 Cir. 1992), Boggs v. Lewis, 863 F.2d 662, 663 (9th Cir. 1988),  
25 and Takeda v. Northwestern National Life Insurance Co., 765 F.2d  
26 815, 818 (9th Cir. 1985), Plaintiff argues § 205 should be  
27 strictly construed against removal.

28 Plaintiff's argument is not well taken. Gaus, Boggs, and  
29 Takeda did not address § 205; instead, they addressed removal  
30 based either on diversity or § 1441. They are inapplicable  
31 because Congress intended to make removal easier under § 205.  
32 Beiser, 284 F.3d at 674.

1 this case.

2 This action relates to the arbitration agreement.

3 2. Whether the Arbitration Agreement Falls Under the  
4 Convention

5 For the Convention to apply, the commercial relationship out of  
6 which the agreement arises need only involve property located abroad,  
7 envision performance abroad, or otherwise relate to a foreign state. 9  
8 U.S.C. § 202 (1999); Freudensprung v. Offshore Technical Servs., Inc.,  
9 379 F.3d 327, 340 (5th Cir. 2004) (declaring the Convention applies to  
10 an arbitration agreement, even between two U.S. citizens, "provided  
11 there is a 'reasonable relation' between the parties' commercial  
12 relationship and some 'important foreign element'").

13 Plaintiff, however, appears to argue the question is whether the  
14 arbitration agreement itself envisions performance abroad. The Court  
15 cannot adopt this view. Under § 202, the question is whether the  
16 commercial relationship envisions performance abroad -- that is, whether  
17 the commercial relationship involves a "reasonable relation" with a  
18 foreign element.

19 Here, Plaintiff borrowed millions of dollars from Deutsche Bank --  
20 a foreign bank -- in connection with the BLIPS transaction, (Compl. ¶  
21 15). This demonstrates the commercial relationship envisioned  
22 performance abroad: the implementation of a transaction involving  
23 millions of dollars in loans from a foreign bank.

24 The arbitration agreement falls under the Convention. Plaintiff's  
25 motion to remand is DENIED.<sup>5/</sup>

26  
27 <sup>5/</sup> Plaintiff's other arguments do not change this result.  
28 Relying on Brockman v. Merabank, 40 F.3d 1013, 1016 (9th Cir.  
1994), and Sabater v. Lead Industries Ass'n, No. 00 Civ. 8026,  
2001 U.S. Dist. LEXIS 14758, at \*17-18 (S.D.N.Y. Sept. 21, 2001),

1       B.   Motions to Compel Arbitration or Stay Proceedings

2           1.   Arbitration

3           At the March 14, 2004 hearing, Plaintiff requested that, before  
4 any stay was ordered, the Court first rule whether Defendant non-  
5 signatories could compel arbitration. Defendants did not object to such  
6 a ruling. Therefore, the Court will rule on this issue.

7           Plaintiff and Deutsche Bank Securities, Inc. entered into an  
8 arbitration agreement, which applies to "all controversies which may  
9 arise between us concerning any transaction . . . performance or breach  
10 of this or any other agreement between us." (Def. KPMG's Mot. Compel  
11 Arbitration at 3.) Defendants, non-signatories to the agreement, seek  
12 to compel arbitration under this agreement. The question is presented  
13 whether a non-signatory to an arbitration agreement can compel  
14 arbitration.

15          While the Ninth Circuit has apparently not yet ruled on the  
16

17  
18 Plaintiff argues the Court no longer has jurisdiction over this  
19 action because Deutsche Bank Securities Inc. and Deutsche Bank  
20 have been dismissed with prejudice.

21          Here, the Court has original jurisdiction over this action  
22 because it relates to an arbitration agreement under § 205.  
23 Neither Brockman nor Sabater addresses the effect of dismissal  
24 under § 205.

25          Plaintiff also asserts the arbitration provision is limited  
26 to "controversies which may arise between us concerning any  
27 transaction of construction, performance or breach of this or any  
28 agreement between us." (Pl.'s Mot. Remand at 9.) According to  
29 Plaintiff, this "narrow" arbitration clause does not extend to  
30 the tort claims at issue here. See Tracer Research Corp. v.  
31 Nat'l Env'tl. Servs. Co., 42 F.3d 1292, 1295-96 (9th Cir. 1994).

32          The Court addressed this argument in its Reddam Order.  
33 There, the Court did not accept this argument because (1) the  
34 general rule is to construe arbitration clauses broadly, (2) any  
35 doubts are to be resolved in favor of arbitration, and (3) the  
36 Court found Tracer Research Corp. to be inapplicable. The Court  
37 reaches the same conclusion here.

1 subject, other circuits have held a non-signatory may compel arbitration  
2 under an equitable estoppel theory. See, e.g., Choctaw Generation Ltd.  
3 P'ship v. Am. Home Assurance Co., 271 F.3d 403, 407 (2d Cir. 2001);  
4 Grigson v. Creative Artists Agency L.L.C., 210 F.3d 524, 528 (5th Cir.  
5 2000); Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc., 10 F.3d 753,  
6 757 (11th Cir. 1993); J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile,  
7 S.A., 863 F.2d 315, 320-21 (4th Cir. 1988); Hughes Masonry Co. v.  
8 Greater Clark County Sch. Bldg. Corp., 659 F.2d 836, 841 n.9 (7th Cir.  
9 1981). See also Med. Air Tech. Corp. v. Marwan Inv., Inc., 303 F.3d  
10 11, 18-19 (1st Cir. 2002) (noting the availability of equitable  
11 estoppel to compel arbitration). This principle was recently adopted by  
12 at least one California state court. Metalclad Corp. v. Ventana Envtl.  
13 Org. P'ship, 109 Cal. App. 4th 1705, 1717 (2003).

14 Several Ninth Circuit district courts have recognized and applied  
15 the equitable estoppel theory. For example, Estate of Garcia v.  
16 Stonechange, Ltd., No. C-97-4368, 1998 WL118177, at \*5 (N.D. Cal. Mar.  
17 2, 1998), recognized equitable estoppel standing, and cited with  
18 approval Eleventh Circuit equitable estoppel cases, applicable when  
19 "obligations and duties are 'intimately founded in and intertwined with  
20 the underlying contract obligations.'" In a significant recent case,  
21 Boston Telecommunications Group, Inc. v. Deliotte Touche Tohmatsu, 278  
22 F. Supp. 2d 1041, 1048 (N.D. Cal. 2003), held a non-signatory may compel  
23 arbitration "'when the signatory to the contract containing an  
24 arbitration clause raises allegations of substantially interdependent  
25 and concerted misconduct by both the nonsignatory and one or more of the  
26 signatories to the contract.'"

27 The reasoning from the other circuits and district courts from  
28 this Circuit is persuasive. There is no good reason to believe the



1 Ninth Circuit would not recognize equitable estoppel as a theory for a  
2 non-signatory to compel arbitration in an appropriate case.

3 Here, the Court holds the conduct alleged by Plaintiff is  
4 sufficient under the equitable estoppel theory to permit the non-  
5 signatory Defendants to compel arbitration. Plaintiff alleges Deutsche  
6 Bank Securities, Inc. (a signatory) and the non-signatory Defendants  
7 "entered into an agreement and conspiracy between themselves to  
8 fraudulently induce Plaintiff to invest in BLIPS." (Compl. ¶ 112.)  
9 Plaintiff describes the non-signatory Defendants as one team involved in  
10 a single course of misconduct, (Compl. ¶¶ 19, 31, 112), and seeks to  
11 hold them jointly liable for each other's conduct. (Compl. ¶¶ 112-14).  
12 Plaintiff's allegations plead interdependent and concerted misconduct.  
13 See, e.g., Roberson v. The Money Tree, 954 F. Supp. 1519, 1529 n.11  
14 (M.D. Ala. 1997) ("A civil conspiracy is a kind of partnership, in which  
15 each member becomes the agent of the other."); Rutledge v. Elec. Hose &  
16 Rubber Co., 327 F. Supp. 1267, 1274 (C.D. Cal. 1971) ("[A] conspiracy  
17 creates an agency relationship . . . ."), aff'd, 511 F.2d 668 (9th Cir.  
18 1975).

19 The Court holds that, under the present pleadings, the non-  
20 signatory defendants may compel arbitration.<sup>6/</sup>

21 2. Stay

22 A provision in the arbitration agreement limits the ability to  
23 compel arbitration against a party whose claims are encompassed by a  
24

---

25  
26 <sup>6/</sup>At the March 14, 2005 hearing Plaintiff offered to amend  
27 the complaint to take out the conspiracy-related facts.  
28 Plaintiff may make a future motion to amend if he wishes, but it  
is doubtful an amendment would change the outcome: Plaintiff's  
underlying theory is an inter-related, cooperative course of  
misconduct.

1 class action. Specifically, the provision reads:

2 No person shall . . . seek to enforce any pre-dispute  
3 arbitration agreement against any person . . . who is a member  
4 of a putative class who has not opted out of the class with  
5 respect to any claims encompassed by the putative class action  
6 until; (x) the class certification is denied; (y) the class is  
7 decertified; or (z) the customer is excluded from the class[.]

8 (Def. KPMG's Reply at 12.)

9 Here, the Becnel putative class action is pending in Arkansas and  
10 it appears to encompass Plaintiff's claims.

11 This action will be STAYED.<sup>7/</sup>

12 III. DISPOSITION

13 Plaintiff's motion to remand is DENIED. The Court STAYS this  
14 action for 180 days in light of Becnel. Any party may advise the Court

15  
16 <sup>7/</sup> Neither Plaintiff nor Defendants appear to dispute the  
17 propriety of a stay pending resolution in Becnel. Plaintiff  
18 asserts "it is clear . . . the Court cannot order arbitration  
19 until either (1) Becnel is not certified as a class or (2)  
20 [Plaintiff] elects to opt out of Becnel." (Pl.'s Reply at 12.)  
21 Defendant KPMG requests the stay in its reply in support of its  
22 motion to compel arbitration or stay proceedings and in its  
23 opposition to Plaintiff's motion to remand. All Defendants  
24 joined in Defendant KPMG's opposition. (See Def. Carl D.  
25 Hasting's Notice of Joinder; Defs. Presidio Growth & Presidio  
26 Advisory Services' Joinder; Def. Sidley Austin's Opp'n at 3 n.2.)  
27 Defendants Presidio Growth and Presidio Advisory Services  
28 separately request a stay as to all parties if the Court grants  
29 Defendants' motions to compel arbitration.

30 In Reddam, the Court addressed this issue under almost  
31 identical circumstances. In its Reddam Order, the Court granted  
32 a stay because plaintiffs' claims centered on their allegation of  
33 a joint conspiracy to defraud, and, given this commonality,  
34 allowing two proceedings to run concurrently would be inefficient  
35 and risk duplicative findings and inconsistent rulings. (See  
36 Reddam Order at 13-14 (relying on Johnston v. Deutsche Bank (Civ.  
37 No. 03-5240) and Whipple v. Deutsche Bank (Civ. No. 03-5240)).)  
38 This reasoning is applicable here.

1 if, as a result of action in the Becnel case, it is appropriate to  
2 continue or lift this stay. If, at the end of 180 days, the Court has  
3 not heard from either party that it is appropriate to continue the stay,  
4 the Court will assume the matter has been otherwise resolved, and will  
5 dismiss his case without prejudice.

6  
7 DATED: March 28, 2005

8   
9 GERY L. TAYLOR  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT 24**

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

-----  
WILLIAM N. MELTON,

Plaintiff,

-vs-

In Chancery 192922

SIDLEY AUSTIN, et al.,

Defendants.  
-----

Friday, April 22, 2005  
Fairfax, Virginia

The above-entitled matter came on for  
hearing, without a jury, before the HONORABLE  
MARCUS D. WILLIAMS, a Judge in and for the Circuit  
Court of Fairfax County, in the courthouse,

Fairfax, Virginia, pursuant to notice, when there  
were present on behalf of the parties:

1 APPEARANCES:

2 On Behalf of the Plaintiff:

3 Benjamin Dimuro, Esquire

4 DIMURO GINSBERG & MOOK

908 King Street

Suite 200

5 Alexandria, Virginia 22314

6 Maureen McGuirl, Esquire

FENSTERSTOCK & PARTNERS LLP

7 30 Wall Street

8 New York, New York 10005

9 On Behalf of the Defendant:

10 James S. Kurz, Esquire

WOMBLE CARLYLE SANDRIDGE & RICE

11 Fourth Floor

8065 Leesburg Pike

12 Tysons Corner, Virginia 22182

13 Seth C. Farber, Esquire

DEWEY BALLANTINE LLP

14 1301 Avenue of the Americas

New York, New York 10019

15 James R. Hart, Esquire

HART & HORAN

16 3905 Railroad Avenue

Suite 202 South

17 Fairfax, Virginia 22030

18 Jay T. Smith, Esquire

COVINGTON & BURLING

19 1201 Pennsylvania Avenue, N.W.

20 Washington, D.C. 20004

21 On Behalf of Jenkins & Gilcrist:

22 John J. Brandt, Esquire

WILSON ELSEER MOSKOWITZ & DICKER

23 8444 Westpark Drive

Suite 510

24 McLean, Virginia 22102

25 C O N T E N T S

26 Proceedings.....Page Three

1 P R O C E E D I N G S

2 (The court reporter was sworn.)

3 MR. DIMURO: Good morning, your Honor.  
4 Ben Dimuro for the plaintiff. With me, again,  
5 is Maureen McGuirl of the New York Bar, who has  
6 already been admitted in this case.

7 The parties have agreed to split their  
8 time five minutes each, and perhaps we won't  
9 even use all of that time.

10 Thank you.

11 THE COURT: Thank you.

12 MR. SMITH: Jay Smith, your Honor, for  
13 Defendant Sidley Austin Brown & Wood, and Thomas  
14 Smith. I'm going to limit my remarks to the  
15 only new issue that's been raised since briefing  
16 was completed, which is the Steckler case, which  
17 plaintiff submitted to the Court.

18 Now, as the Court is aware, our case  
19 concerns the exact same Ernst and Young  
20 arbitration clause that was at issue in the  
21 Camferdam case in New York where the Southern  
22 District of New York allowed Brown & Wood to

1 compel arbitration.

2 The Steckler case did not compel  
3 arbitration. And what the Court should  
4 appreciate is that the reason some of these  
5 cases are coming out differently is that they  
6 contain and concern different arbitration  
7 clauses.

8 In Steckler, on pages 7 and 9, in  
9 footnotes 67 and 86, the Court specifically  
10 distinguished the Camferdam case twice and said  
11 that it was different because, in that case, it  
12 concerned an Ernst and Young agreement that  
13 contained an arbitration clause that pertained  
14 to the provision of tax services, and that this  
15 meant that claims at issue were more intertwined  
16 in Camferdam than in Steckler.

17 In Steckler, the arbitration clause  
18 was contained in an agreement concerning the  
19 creation of an LLC as one part of a transaction.  
20 And so we think it's clear that, on pages 7 and  
21 9, the Court indicates the result would not be  
22 different.



1                   Steckler also says at one point that  
2                   in that case where you had an arbitration  
3                   agreement in a kind of collateral agreement, not  
4                   the tax advice agreement, the claims couldn't be  
5                   said to be integrally related to the agreement  
6                   that contained the clause.

7                   In Camferdam and here, they are  
8                   integrally related. I will not go into the  
9                   details of the complaint --

10                  THE COURT: I understand.

11                  MR. SMITH: Okay, then, your Honor,  
12                  then I'll leave it at that. And, unless the  
13                  Court has any questions, I'll be through.

14                  Thank you.

15                  MS. MCGUIRL: Good morning, your  
16                  Honor.

17                  We believe that the Steckler Court  
18                  employed the right analysis on two issues. One  
19                  was equitable estoppel and the second was the  
20                  stay.

21                  Now, Camferdam did involve the same  
22                  E&Y agreement, but in that case, Judge Jones in

1 the Southern District really didn't analyze how  
2 the claims against the lawyers in Deutsche Bank  
3 were intertwined with the contract with E&Y.

4 And Judge Sheindlin said that's what  
5 this Court must do. When we submit, as we  
6 explained in our papers, that if you look at  
7 whether or not we would have a claim against  
8 Sidley Austin if there was no agreement with  
9 Ernst & Young, the answer is clearly yes. We  
10 would have that claim because we had a separate  
11 agreement with Sidley Austin.

12 Our claims for legal malpractice don't  
13 depend on a contract for accounting malpractice.

14 In both cases, in Camferdam and in  
15 Steckler, the Court was not asked to consider  
16 and wasn't directed to consider the fiduciary  
17 duties that lawyers and Deutsche Bank, which had  
18 been a long-term investment for Mr. Burlow and  
19 Mr. Melton, had to make full disclosure about  
20 arbitration agreements and what the consequences  
21 of arbitration agreements would be.

22 And if the Court here allows them to

1 overlook their duties, duties they had as  
2 fiduciaries, in --

3 THE COURT: This is all the agreed  
4 part, basically. We've dealt with this.

5 MS. MCGUIRL: Okay. And then with  
6 respect to the stay, Judge Sheindlin makes the  
7 point that the defendants in this case are faced  
8 with discovery all over the country. There's no  
9 need for them to have a stay.

10 And one thing we didn't address in our  
11 briefs was how long an arbitration against E&Y  
12 is likely to take. It hasn't commenced yet. My  
13 experience with the Triple-A in complex cases is  
14 that you get no more than a day or two at a  
15 time, your Honor.

16 You spread your arbitration out over  
17 months. So we would be looking at staying, at  
18 delaying this case if there was a stay, I think  
19 in excess of a year.

20 And then here the plaintiffs have made  
21 a number of motions attacking the pleadings.

22 So we're talking about delaying a case

1 filed in November for probably several years.  
2 Our clients have paid a significant amount of  
3 money. Mr. Melton has paid \$6 million in  
4 penalties already to the government, and that  
5 kind of delay causes them prejudice.

6 THE COURT: Is that everybody now?

7 I'm dividing up my ruling between two  
8 sets of defendants. The attorney defendants,  
9 the law firm defendants and the nonattorney  
10 defendants. The analysis is different.

11 What we're dealing with here is a  
12 mandatory arbitration clause which is found in  
13 the Ernst & Young agreement between Ernst &  
14 Young and the plaintiffs entered into on  
15 November 5th, 1999.

16 This case involves nonsignatories to  
17 that agreement, asking the Court to compel  
18 arbitration for certain disputes that allegedly  
19 arose from that agreement and staying the  
20 pending lawsuits.

21 Mandatory arbitration provision in the  
22 Ernst & Young agreement states as follows: Any

1 controversy or claim arising out of or relating  
2 to tax and tax-related services now or hereafter  
3 provided by us to you (including any such matter  
4 involving a parent, subsidiary, affiliate,  
5 successor in interest or agent of Ernst & Young  
6 LLP) shall be submitted first to voluntary  
7 mediation. And if mediation is not successful,  
8 then to binding arbitration in accordance with  
9 the dispute resolution procedures set forth in  
10 the agreement in support of the attachment to  
11 this letter.

12 For reasons I'm about to state, I will  
13 be granting Defendant Deutsche Bank and  
14 Defendant Fisk motion to compel arbitration.

15 First of all, we're dealing with broad  
16 arbitration provision disagreement and it  
17 applies to tax and tax related services.

18 It's clear from the pleadings that  
19 Deutsche Bank provided tax-related services to  
20 the plaintiffs and acted as their investor,  
21 advisor, money manager and broker in relation to  
22 the COBRA tax strategy.

1                   Although Defendants Deutsche Bank are  
2   nonsignatories to the Ernst & Young agreement,  
3   the doctrine of equitable estoppel can allow --  
4   it doesn't permit a nonsignatory to compel the  
5   signatory to arbitrate if, one, the signatory to  
6   a written agreement containing arbitration  
7   clause must rely on the terms of the written  
8   agreement in asserting its claims against the  
9   nonsignatory or, two, when the signatory to the  
10   contract containing the arbitration clause  
11   raises allegations of substantial interdependent  
12   and concerted misconduct by both the  
13   nonsignatory and one or more of the signatories  
14   to the contract.

15                   In this case we're dealing with the  
16   second circumstance. The second circumstance is  
17   satisfied in that the plaintiff's allegations  
18   throughout their complaint allege concerted  
19   misconduct and interconnected facts.

20                   Specifically plaintiffs allege that  
21   Defendants Deutsche Bank had an agreement with  
22   Ernst & Young involving the design, development

1 and promoting the COBRA tax shelters and that  
2 Ernst & Young made many misrepresentations to  
3 the plaintiffs with the knowledge, authority, or  
4 consent of Deutsche Bank.

5 The plaintiffs allege that Defendants  
6 Deutsche Bank structured the transactions in a  
7 way that would not allow the plaintiffs to earn  
8 a profit, and that the structure was key to the  
9 defendants' promotion of tax shelters.

10 The plaintiff's allegation that -- the  
11 plaintiffs allege that Defendant Deutsche Bank  
12 conspired with Ernst & Young and other  
13 defendants regarding COBRA tax shelters.  
14 Plaintiff's allegations are generally stated  
15 against the defendants collectively and many  
16 ways undifferentiated in terms of conduct. It's  
17 indicative of concerted misconduct and  
18 interconnectedness. That's the term I think has  
19 been used in some federal cases.

20 Without belaboring this, I will just  
21 point to examples of this interconnectedness  
22 that's been on the pleadings, concerted actions

1 that allege: Paragraphs 57, 58, 82. 84, 87, 89  
2 through 91, 94, 146, 147, 150, 155. It's not  
3 meant to be exhaustive but simply as an example  
4 of what it's referring to.

5 With regard to Defendants Brown &  
6 Wood, Defendant Smith and Defendant Ruble's  
7 motion to compel arbitration, the Court is going  
8 to deny your motion to arbitrate.

9 Arbitration provision in the Ernst &  
10 Young agreement is, indeed, broad and both  
11 Virginia and New York recognize that an  
12 attorney-client relationship is a special  
13 relationship which is governed by professional  
14 rules.

15 In Heinzman versus Fine, Virginia  
16 Supreme Court appears to recognize that such  
17 attorney-client contracts are not mere  
18 commercial contracts and are under the  
19 classification peculiar to themselves. You'll  
20 find this at 217 VA 958, 1977 case.

21 In Heinzman, the Virginia Supreme  
22 Court implicitly recognized that professional



1 rules may affect the contract between attorneys  
2 and clients. Similarly, I believe that New York  
3 law recognizes the same.

4 In this case, it appears that there  
5 was no informed consent by the plaintiffs in  
6 entering into an agreement whereby liability  
7 against their attorneys would be limited or  
8 their ability to choose a forum in which to  
9 litigate would be constrained.

10 Both Virginia and New York, the  
11 professional rules prohibit an attorney from  
12 including a mandatory arbitration provision  
13 without making certain disclosures and obtaining  
14 informed consent of their client.

15 Although the provisions of the  
16 agreement that contained limitations on the  
17 terms of liability in the Ernst & Young  
18 agreement could be severed from the agreement  
19 because of the severability clause, nothing  
20 under these facts presented to the Court  
21 indicate that the plaintiffs were ever advised  
22 by their attorneys that they had waived their

1 right to litigate their disputes in court.

2 Therefore, even if the above  
3 provisions were severed, it would not cure the  
4 fact that disclosures of consent to the clients  
5 would be required.

6 If this arbitration provision were to  
7 be enforced against attorneys or law firms, the  
8 attorney-client relationship would be  
9 undermined.

10 It is noted that applying the  
11 equitable estoppel is within the Court's  
12 discretion.

13 This can be found in Grigson versus  
14 Creative Artists Agency, 210 Federal 3rd 524,  
15 line 24, 5th Circuit. And it's also clear that  
16 the linchpin for the application of equitable  
17 estoppel is equitable in nature. It awards  
18 basic fairness.

19 In applying that standard here, the  
20 Court finds to apply equitable estoppel as far  
21 as to the claims against the attorneys.

22 I will deny that.

1                   However, I will grant a stay pending  
2 arbitration without prejudice. You may have to  
3 come in and ask for a lift of stay if an  
4 unreasonable time has passed before resolution  
5 of this matter at arbitration.

6                   I think that concludes the issues.  
7 Anything else?

8                   Who will draft the order?

9                   MR. DIMURO: I'll draft the order,  
10 your Honor. Is this something that you would  
11 permit us to do over the next several days, or  
12 do you want -- this is a fairly complicated  
13 order.

14                  THE COURT: Well, I can make it  
15 simple. Just say that for reasons stated of  
16 record.

17                  MR. DIMURO: That's obviously an  
18 option. That way you don't have to worry about  
19 -- I'll be the scrivener out in the hallway.

20                  THE COURT: Thank you.

21                  (Whereupon, the proceedings were  
22 adjourned at 12:57 o'clock a.m.)

1 THE COURT: Do you all need something  
2 on the Melton case? I see everyone back in  
3 here.

4 What is the --

5 MS. MCGUIRL: If I could explain, your  
6 Honor.

7 You had compelled us to arbitrate with  
8 Deutsche Bank, and the order doesn't clearly say  
9 if we're supposed to arbitrate --

10 THE COURT: Not just Deutsche, but all  
11 the non -- nonattorneys.

12 MS. MCGUIRL: The nonattorneys. Not  
13 clear if we're arbitrating under Triple-A rules  
14 or the NASD rules with that.

15 THE COURT: I don't think that was an  
16 issue of the long brief, was it?

17 MS. MCGUIRL: I'm sorry?

18 THE COURT: Was that an issue of the  
19 long brief?

20 MS. MCGUIRL: No, it wasn't. But if  
21 we do NASD rules, the NASD will decline to hear  
22 the case because there's class action pending.

1 So either we --

2 THE COURT: That would frustrate the  
3 arbitration.

4 MS. MCGUIRL: Yes. And, also, Sidley  
5 is saying that the stay against them is as long  
6 as we're arbitrating with E&Y or Deutsche Bank.  
7 I could finish the E&Y arbitration. And if I  
8 have to do NASD with Deutsche Bank, it's going  
9 to be a long time.

10 THE COURT: I understand what we're  
11 going to be facing here. But my understanding  
12 is because of these facts, I mean, it's still  
13 the same --

14 You have to finish all arbitration, I  
15 would think.

16 MS. MCGUIRL: Well, if your Honor then  
17 is finding the Deutsche Bank has to compel  
18 arbitration under E&Y and you order them to  
19 arbitration before the Triple-A, I think the  
20 problem simply goes away.

21 THE COURT: All right. Anybody have  
22 any problem with Triple-A?

1 MR. SMITH: Well, your Honor, the -- I  
2 think set forth on behalf of Deutsche Bank, as I  
3 understood your Honor, you were granting our  
4 motion to compel arbitration based on estoppel  
5 grounds. And the estoppel arguments that we  
6 were making were tied to the E&Y agreement which  
7 provides for Triple-A arbitration.

8 We had a separate motion which I think  
9 Court didn't address, based on our own  
10 arbitration.

11 THE COURT: Right, I did, and I think  
12 I need to reach it.

13 MR. SMITH: I think the Court doesn't  
14 necessarily need to reach it if there's going to  
15 be an arbitration.

16 THE COURT: Let's say Triple-A then.  
17 All right?

18 MS. MCGUIRL: Then I think if we put  
19 Triple-A on the Deutsche Bank, that will resolve  
20 the issue with Sidley, your Honor.

21 MR. SMITH: Because then it would be  
22 clear that the litigation with Sidley is stayed,

1 having resolution of arbitration with the other  
2 parties, include Deutsche Bank.

3 THE COURT: I like that better, yes.

4 MS. MCGUIRL: Thank you, your Honor.

5 THE COURT: Thank you.

6 MR. SMITH: Thank you, your Honor.

7 (Whereupon, the above-entitled  
8 proceedings were concluded at 1:02 o'clock p.m.)  
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